PUBLIC UTILITIES BOARD

Insurance Review

Homeowners / Commercial / Marine

Report to Government - April 2006

Board of Commissioners
of Public Utilities
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April 21, 2006

The Honourable Dianne Whalen
Minister of Government Services
Department of Government Services
Government of Newfoundland and Labrador
2nd Floor, West Block, Confederation Building
P. O. Box 8700
St. John's, NL
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Dear Minister:

In October 2004 the Provincial Government requested the Board review and report on a number of issues affecting automobile, homeowners, commercial and marine insurance.

As you are aware, the Board's Report to Government on the Automobile Insurance Review was forwarded to you in March 2005. The remaining portion of this review is now completed and the Board is pleased to submit its Report to Government on the Homeowners, Commercial and Marine Insurance Review.

The Board would like to express its appreciation to all who so diligently contributed to the completion of this review.

Respectfully submitted,

Robert Noseworthy	Darlene Whalen, P. Eng.
Chair and Chief Executive Officer	Vice-Chair

EXECUTIVE SUMMARY

The Review

In October 2004 the Government of Newfoundland and Labrador directed the Board of Commissioners of Public Utilities (the "Board") to undertake a review of and report on certain issues as set out in a Terms of Reference with respect to Automobile, Homeowners, Commercial and Marine Insurance.

Mr. Thomas Johnson was appointed by Government as the Consumer Advocate and participated in all aspects of the review.

The Board completed its review of automobile insurance and submitted its report to Government in March 2005. The Board has now completed the remaining components of its comprehensive review.

The Board was requested to report on issues that may be raised surrounding the availability and accessibility of homeowners and commercial insurance in light of associated profit margins and identify ways in which these issues may be addressed. Specifically concerning commercial insurance the Board was asked to focus on the hospitality/tourism industry and not-for-profit/volunteer sector. The Board was further directed to report on the accessibility and availability of marine insurance as well as the possible reasons for high loss ratios and year-to-year variation.

This report contains the outcome of the public review, research, analysis and related discussions carried out by the Board into homeowners, commercial and marine insurance issues. This review was carried out in cooperation with the industry and numerous other interested groups and organizations who contributed to the work of the Board.

<u>Homeowners and Commercial Insurance</u>

The Insurance Market

The property and casualty insurance market encompasses all insurance, except life and health, and includes automobile, property (both personal and commercial), liability and marine insurance, among others. The size of the market in Newfoundland and Labrador relative to Canada is small with homeowners insurance comprising 1.6% and commercial 1.0-1.1%, based on premium volume. Currently the provincial marketplace is operating competitively with the exception of certain risks such as bars/lounges where alcohol is served and the voluntary sector.

The insurance market operates in business cycles, with a hard market accompanied by higher premiums, larger loss ratios, lower profitability and less competition followed by a soft market having stable or reducing premiums, greater industry profitability and increased competition. This phenomenon was also noted in the automobile insurance review and was referred to as the cycle of 'crisis and reform'. Since the hard market of the late 90's extending to 2003, conditions have improved through a combination of industry adjustments and government reforms to where most consumers have experienced a general softening of market conditions in recent years with premiums stabilizing and in some cases coming down.

While noting the reversal of certain market factors is already beginning, some industry experts are projecting an 18-24 month horizon before hard market conditions once again return.

Issues Raised

During the review the Board received input from a wide variety of interested stakeholders concerning the following issues:

Homeowners

- **Hard to place risks** associated with downtown St. John's, electrical wiring, woodstoves, oil tanks, galvanized plumbing, and student housing.
- **Disclosure and transparency** with respect to quotes, policy language, commissions, deductibles, and adequate notice regarding cancellation or non-renewal of policies.
- **Other issues** such as mandated repairs/renovations, replacement value coverage and the effect of fire protection levels.

Commercial

- **Costs and availability of commercial insurance** and the negative impact on businesses and the voluntary sector of significant premium increases and other aspects such as inadequate notice for policy changes.
- **Perceived disconnect between claims and increased premiums,** particularly for those groups and sectors with limited or no claims. The issue also included questions about whether premiums reflect actual risks and how programs that are put in place to reduce risks are recognized by the industry in premium setting.
- **Lack of insurance knowledge and information**, including access to basic information on commercial insurance by consumers, and also concerns about the level of knowledge of insurers about the activities and risk levels of their commercial insureds.

The Challenge

In considering the submissions and presentations of stakeholders during the review the Board was struck by the disparate gap between the industry and the Consumer Advocate, on behalf of consumers. According to the industry, given the lack of consumer response during this component of the review, there is no justification for further intervention by Government in the form of regulation or legislation. The industry described the provincial marketplace as working well, albeit with fewer insurers than most provinces, and supported a competitive business environment rather than Government intervention as the best way to ensure consumers have access to a broad range of insurance products and services at competitive prices. The insurance industry expressed the view that since the last hard market the industry has fundamentally changed and numerous voluntary initiatives are now in place to assist consumers in addressing issues raised in the review.

The Consumer Advocate acknowledged the relatively low public interest but countered this should not be confused with the industry not having a duty to strive and improve the current situation for consumers, particularly in advance of the next hard market. The Consumer Advocate argued the voluntary customer service initiatives introduced by the industry are not adequate and consumers should have the 'right to know' basic information with respect to their insurance policies.

The Board notes this gap in respective positions of the industry and the Consumer Advocate is not unexpected and the low consumer participation during the review may be due to improved circumstances in the current insurance market. The key challenge, however, will be to determine which of the following options and opportunities, if any, should be pursued to make the provincial marketplace work for consumers in light of the approaching harder market.

Options and Opportunities

Based on discussion and consultation with stakeholders on the issues raised the Board has presented a number of options and opportunities for consideration. These involve consumer protection and consumer assistance initiatives including a Consumer's Bill of Rights, mandated disclosure and underwriting rules, increased notice period for cancellation or non-renewal, a consumer complaint mechanism and market assistance for hard to place risks. In proposing these options the Consumer Advocate distinguished between the impact of implementing these initiatives in the stable homeowners insurance market as compared to the vulnerable commercial insurance marketplace.

The Board highlights the extensive need for improved communication, education and awareness amongst stakeholders and has outlined a series of on-going initiatives and other measures which may be supported in addressing this challenge.

Specifically with respect to homeowners insurance the Board has noted various practical solutions to address issues raised during the review relating to downtown St. John's, oil tanks and mandated repairs and renovations.

Similarly with regard to commercial insurance the Board has considered the importance of risk management in ameliorating risk and impacting rates. The Board also examined alternative mechanisms to providing insurance to the complex and frequently challenging commercial marketplace.

The Board believes the voluntary sector requires special attention in meeting its future insurance needs and has outlined a series of initiatives including education and outreach, funding, volunteer protection through legislation and reducing risk through separate reclassification of the voluntary sector.

The Board has reviewed several public policy considerations for Government. These encompass reducing tax on insurance, possibly starting with the voluntary sector, legislative reform and regulation.

In concluding this review, the Board notes the numerous problems concerning the lack of useful financial and other data available through the insurance industry. The quality of data collected from individual insurers was, in most cases, inadequate for purposes of this review. This experience is similar to that encountered during an earlier review by the Nova Scotia Insurance Review Board. In this report, while the Board has addressed various proposals to bridge the information gap in future, the data issues inherent during the review meant analysis was sometimes incomplete and in particular a satisfactory measure of profitability by insurance product could not be reasonably determined.

Implementation Framework

With regard to implementation the Board has focused on the inevitability of the next hard market with its commensurate impact on insurance rates and availability. According to information presented to the Board during the review consumers may experience hard market conditions as early as 18-24 months from now. Several participants in the review called for stakeholders, particularly Government, to launch appropriate and timely action respecting options and opportunities contained in this report and to do so in a collaborative and coordinated way promoting on-going dialogue and seeking the cooperation of all stakeholders. The Board has provided a list of key implementation questions and alternative delivery systems to aid in considering an implementation framework. While there are no easy answers to these questions the Board notes implementation should centre on which workable and practical tools or solutions are required to mitigate consumer concerns and alleviate industry and political pressures in advance of the next hard market. The Board strongly encourages that any mandated, legislated or regulated provisions should be carefully considered with a view to their overall impact on the competitive marketplace.

Marine Insurance

The marine insurance market in Newfoundland and Labrador represents only 0.02% of the Canadian marketplace. While the availability and accessibility of insurance for larger fishing vessels is not an issue at the present time, concern was expressed regarding the vulnerability of this small market to approaching hard market conditions. The availability and accessibility of insurance for smaller fishing craft valued below $300,000 remains a problem for vessel owners who either don’t purchase insurance, have limited coverage or are forced to maintain high deductibles. Higher loss ratios in this Province are generally the result of a higher incidence of insurance claims, in particular a number of tragic occurrences in recent years. The Board has outlined a number of remedial measures, which were suggested during the review to address the particular issues raised. These measures include supporting implementation of the recommendations of the Transportation Safety Board on vessel stability, initiating a risk management program in conjunction with the Marine Institute of Newfoundland and Labrador, possible re-establishment of the Federal Fishing Vessel Insurance Program for vessels unable to access the regular insurance market, and/or a consumer assistance initiative for hard to place risks.

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1.0 INTRODUCTION

1.1 Scope and Objectives

In October 2004 the Government of Newfoundland and Labrador directed the Newfoundland and Labrador Board of Commissioners of Public Utilities (the "Board") to conduct a review of automobile, homeowners, commercial and marine insurance in the Province based on a prescribed Terms of Reference.

The Board completed its review of automobile insurance and submitted a report to Government on March 31, 2005. This comprehensive report presented the findings of various studies conducted by independent consultants as well as the results of the Board's own research and analysis. The report also detailed information presented at public sessions held by both the Consumer Advocate and the Board along with written comments and other input received by the Board during the course of the review. Following submission of the Board's report Government implemented several legislative reforms in the area of automobile insurance including a mandated premium reduction of at least 5%, unless higher rates could be justified upon further submission to the Board, and the elimination of rating based on age, gender and marital status.

This second report is focused on homeowners, commercial and marine insurance and presents the results of the Board's review into the related issues set out in the Terms of Reference. Similar to the automobile insurance review, the purpose of this document is to provide a sound foundation for the determination of Government policy with respect to these remaining insurance activities. Since the formulation of public policy is the mandate of Government this report does not make specific recommendations concerning the myriad of issues raised but rather presents possible options and solutions for consideration by Government.

1.2 Mandate and Authority

The Board is an independent administrative tribunal which, among other things, has responsibility for the supervision of automobile insurance rates and related underwriting guidelines in the Province. The Board derives its mandate and authority to regulate automobile insurance from provincial statutes and legislation, particularly the *Public Utilities Act*, the *Automobile Insurance Act*, and the *Insurance Companies Act*. The *Public Utilities Act* provides the primary governing authority for the Board in discharging its mandate. The Board is not mandated with any responsibilities in terms of regulating homeowners, commercial or marine insurance. The Superintendent of Insurance, however, does have specific powers regarding licensing, solvency and other regulatory oversight in relation to these particular insurance coverages. In addition, the *Insurance Companies Act* was amended in 2004 to provide authority to the Board to conduct reviews into various aspects of insurance as directed by the Lieutenant Governor in Council.

1.3 Terms of Reference

Pursuant to s. 3.1 of the *Insurance Companies Act*, on October 28, 2004 Government issued the Terms of Reference for the Public Utilities Board Review Into Automobile, Homeowners, Commercial and Marine Insurance. Excepting the portion related to the already completed automobile insurance review, the Terms of Reference directing the Board's review of homeowners, commercial and marine insurance is outlined below:

"Homeowners Insurance

- *Report on issues which may be raised surrounding availability and accessibility of this insurance in light of the associated profit margins and identify ways in which these issues may be addressed such as through:*
  - *Rate regulation;*
  - *Alternative means of providing this insurance, including the introduction of risk sharing pools; and*
  - *Underwriting guidelines.*

Commercial Insurance

- *Report on issues which may be raised surrounding availability and accessibility of this insurance in light of the associated profit margins, particularly with reference to the hospitality/tourism industry, as well as, not-for-profit organizations, volunteer organizations and other individuals involved in volunteer activities. Identify ways in which these issues may be addressed such as through:*
  - *Rate regulation;*
  - *Alternative means of providing this insurance including the introduction of risk sharing pools, caps or deductibles; and*
  - *Grouping or classification of commercial consumers in setting rates.*

Marine Insurance

- *Report on issues that may be raised with respect to the accessibility and availability of marine insurance.*
- *Report on possible reasons for high loss ratios and year to year variation."*

1.4 Consumer Advocate

On September 24, 2004 Mr. Thomas Johnson was appointed as Consumer Advocate, pursuant to s. 3.1 of the *Insurance Companies Act*, to represent consumers for all phases of the review. The Consumer Advocate participated fully throughout this review by providing information to the public in various media venues, holding public sessions, gathering public input, participating in conferences and discussions held with stakeholders, and making final written submissions to the Board.

1.5 Review Methodology

1.5.1 Process

The approach for homeowners, commercial and marine insurance differed considerably from the more formalized public hearing process and use of consultants followed during the automobile insurance review.

Notice of the homeowners, commercial and marine insurance review was published in papers around the Province starting on May 21, 2005. The public was invited to provide comments and feedback with respect to any issues or concerns regarding these insurance products. Comments could be made by contacting the Board in writing, fax, e-mail, or using a toll-free telephone number.

A series of public meetings was also hosted by the Consumer Advocate from June 8th to June 16th, 2005. These public meetings were held on June 8th (St. John's), June 13th (Marystown), June 14th (Gander), June 15th (Corner Brook), and June 16th (Happy Valley-Goose Bay). The Consumer Advocate also sent letters to various groups and organizations in the Province requesting feedback on the issues under review. Using this written input along with presentations and/or comments received at the public meetings the Consumer Advocate provided a written submission to the Board summarizing the issues raised and feedback received.

For homeowners insurance initial meetings were held with the Consumer Advocate, the Insurance Brokers Association of Newfoundland (IBAN) and the Insurance Bureau of Canada (IBC) to discuss the specific issues to be reviewed by the Board. Follow-up roundtable discussions involving the review commissioners, Board staff, the Consumer Advocate, IBC, IBAN, and insurance company representatives were subsequently held at the Board's office. The Board also offered the opportunity to individuals who provided written comments to meet with the Board.

The commercial insurance review followed much the same process as homeowners insurance with the exception that consumers and special interest stakeholders who provided written submissions and/or made contact with the Consumer Advocate or the Board were invited to make presentations directly to the Board. These included such groups as Hospitality Newfoundland and Labrador, the Beverage Industry Association of Newfoundland and Labrador, the Community Services Council, the Royal Canadian Legion, the St. John's Board of Trade, the Canadian Federation of Independent Businesses, and others. These organizations also participated in follow-up discussions on proposed options/solutions and implementation issues.

With respect to marine insurance the Board again followed a similar process to that for homeowners and commercial insurance. The Board received a number of written comments from marine insurance consumers and the Fish Food and Allied Workers (FFAW/CAW) made a presentation. The Board also held discussions with representatives of the Canadian Board of Marine Underwriters and two local brokers.

Exhibit 1 provides a complete listing of persons and organizations who participated in the homeowners, commercial and marine insurance review, either through formal submissions, roundtable discussions, written comments or other means.

1.5.2 Information, Data and Studies

Due to the lack of provincially based[1] information concerning homeowners, commercial and marine insurance, the Board developed its own sources of data and information, largely through information requests to the industry (IBC, IBAN and individual insurance companies) as well as stakeholder discussions, and literature research. Notable exceptions involved some primary research conducted by the Community Services Council regarding the voluntary sector and the Mercer Oliver Wyman (Mercer) Study entitled "*Study of Homeowner, Commercial Property, Liability, and Marine Insurance"* prepared for the Government of Newfoundland and Labrador in April 2004. Also supplementing available provincial information the Board notes there have been similar sectoral insurance reviews carried out in Atlantic Canada. In particular, in November 2004 the Nova Scotia Insurance Review Board (NSIRB) released its review report entitled *"Report on Rates and Availability of Fire, Other Property and Liability Insurance for Homeowners, Tenants, Non-Profit Organizations and Small Businesses."* Also, in November 2005, IBC concluded a study in conjunction with a variety of stakeholders entitled "*Final Report of the Atlantic Task Force on Insurance Availability and Affordability.* According to IBC this report outlined solutions for insurance challenges facing business and non-profit organizations in the Atlantic provinces. Participating members of the Task Force from this Province included Ms. Penelope Rowe, Chief Executive Officer of the Community Services Council, Mr. Len King, Past President, Newfoundland and Labrador Real Estate Association, and Mr. Winston Morris, Superintendent of Insurance (Newfoundland and Labrador).

1.6 Report Structure

While the Terms of Reference respecting accessibility and availability of homeowners, commercial and marine insurance were explicit, the Board received feedback on numerous other related and unrelated issues. The report is structured in a comprehensive fashion to cover all issues brought to the Board's attention whether or not directly reflected in the Terms of Reference. The report outlines background on the property and casualty industry in Canada as well as the experience of the industry in Newfoundland and Labrador. The report consolidates each and every matter raised during the review into specific issues and then examines all relevant data and input brought before the Board in considering particular options and opportunities to address these various issues. The report also details a framework of implementation considerations arising from the review.

[1] The lack of useful quantitative data to enable an adequate review of homeowners and commercial insurance is discussed in Section 2.4

The report structure is reflected in the Table of Contents and can be summarized as follows:

- **1.0 – Introduction**
  Sets out the scope and objectives of the study, and describes the review process and methodology.

- **2.0 – Background**
  Provides background information containing an overview of the property and casualty insurance industry in Canada along with the impact of insurance cycles and other influences on the property and casualty marketplace. Information on policy forms, coverages and how premiums are determined for both homeowners and commercial insurance is also presented. The information and data requested by the Board as part of this review is also considered.

- **3.0 – Profile of Homeowners and Commercial Insurance in Newfoundland and Labrador**
  Outlines a profile of homeowners and commercial insurance in Newfoundland and Labrador encompassing market structure, premiums and loss experience as well as industry profitability.

- **4.0 – Homeowners Insurance**
- **5.0 – Commercial Insurance**
  Sets out the issues respectively for homeowners and commercial insurance that were raised by stakeholders during the review.

- **6.0 – Options and Opportunities**
  Presents options and opportunities to be considered in addressing issues raised by stakeholders, including summary Board comments.

- **7.0 – Implementation Framework**
  Sets out a framework of implementation considerations resulting from the review.

- **8.0 – Marine Insurance**
  Presents the issues raised with respect to marine insurance, and also includes a discussion of the reasons for high loss ratios in this sector.

1.7 Acknowledgements

The Board expresses its appreciation to all participants and contributors to this review. In particular, the Board wishes to acknowledge the cooperation and participation of the Consumer Advocate and the industry (IBC, IBAN and industry representatives), who greatly assisted the Board throughout this review. The Board also wishes to thank other interested organizations such as the Community Services Council, Hospitality Newfoundland and Labrador, the Beverage Industry Association and the Canadian Federation of Independent Businesses who willingly made themselves available and provided valuable input during the review. The Board further recognizes the work of its own dedicated staff in completing this review.

2.0 BACKGROUND

2.1 Property and Casualty Insurance in Canada

2.1.1 Overview

Property and casualty insurance, sometimes referred to as general insurance, encompasses the broad range of all insurances except life and health. This includes insurances covering automobile, property (both personal and commercial), liability, business interruption, boiler and machinery, crime and fidelity, liability, marine, and aviation. There may also be specialty coverages available within each of these major insurance coverage areas. At least 206 private property and casualty insurance companies actively compete in Canada, with about 100 of these companies providing most of the property and casualty insurance purchased in the country.[2]

The largest single class of property and casualty insurance in Canada is automobile insurance, with property insurance ranking second and liability insurance ranking third. In 2003 registered sales for the property and casualty industry were over $31.4 billion, and the industry had controlling assets of about $88.3 billion. The breakdown of premiums, by line of business, is shown below:

Property and Casualty Insurance in Canada Premiums by Line of Business		
Line of Business	**Net Premium ($000,000)**	**Net Premium (% of total)**
Auto	15,781	50.2
Commercial Property	4,518	14.4
Personal Property	4,452	14.2
Liability	4,081	13.0
Other	1,698	5.4
Accident, sickness	883	2.8
Total	**$31,413**	**100.0%**

Source: IBC Facts of the General Insurance Industry in Canada 2004, pg.6

The federal Office of the Superintendent of Financial Institutions (OSFI) reports that the property and casualty market in Canada is a competitive one with no single corporate group attaining more than a 10% market share and with 10 companies controlling roughly 60% of the market.[3]

2.1.2 Marketing and Distribution

Property and casualty insurance is marketed and sold in Canada through a number of delivery systems, including independent agents or brokers, exclusive agents, or by direct writing. Independent agents or brokers may represent a number of different insurers. When a policy is written, the broker issues and services the policy and collects the premium. The client interfaces

[2] IBC, Facts of the General Insurance Industry in Canada 2004, pg. 2.
[3] OFSI, Report on the Property and Casualty (P&C) Insurance Industry in Canada, September 19, 2003, pg. 4.

with the broker and not the insurer. Compensation is on a commission basis for each policy written. Exclusive agents represent only one insurance company. These agents are also compensated on a commission basis and must pay their own expenses. The agent also issues the policy and collects the premium but the clients usually interface with the insurance company. Direct insurance writers sell directly to the public without an intermediary, with the company issuing and servicing the policies and collecting the premiums.

2.1.3 Regulation and Supervision

The conduct of the property and casualty insurance business in Canada is supervised and regulated by the federal or provincial governments. OSFI is concerned primarily with the solvency and stability of insurance companies that are registered under federal statutes. The key federal statutes governing the activities of the property and casualty industry are the *Office of the Superintendent of Financial Institutions Act* and the *Insurance Companies Act.* Most of the property and casualty industry in Canada is federally regulated.

The provincial Superintendents of Insurance provide financial supervision of those insurers operating under provincial charters, and have the primary role in regulating market conduct, including supervising the terms and conditions of insurance contracts and the licensing of companies, agents, brokers and adjusters.

Automobile insurance is mandatory in all provinces and territories in Canada and is regulated in most jurisdictions in Canada with respect to rates and underwriting practices. Personal property, commercial and marine insurance is not regulated in the same manner as automobile insurance.

2.1.4 Influences on the Property and Casualty Industry

There are several factors that influence the property and casualty industry, both globally and in Canada, and which can affect underwriting decisions and premiums of insurers for the various product lines offered. These influences include the legal environment, investment climate, foreign ownership interests, and the global reinsurance[4] market.

Insurance costs may be impacted by court decisions and legislation, either through a broadening of liability or the creation of legal uncertainty. Developments in tort law in the last decade concerning vicarious liability, the scope of alcohol-related liability, extent of damages for personal injury and fatal accidents, and the rules relating to the recovery of negligently-inflicted pure economic loss all have the potential to affect insurance premiums as insurers factor the changed risk exposure into their rate setting. The development of class actions has also exposed insurers to increased liabilities as it has increased the scope of claims.[5]

Another significant influence on insurance costs is the investment climate. As will be discussed later the return an insurer earns on investments is an important rate making element. In times of sound investment returns and optimism regarding the investment market consumers may benefit

[4] Reinsurance is defined as the transfer of all or part of a particular risk to another insurer.
[5] C. Brown, J. Neyers and S. Pitel, The Impact of Recent Legal Developments on Liability Insurance, August 31, 2005, pg. 63-64.

with reduced rates and improved availability. Unfortunately the converse is also true when poor returns are experienced.

Foreign ownership interests also exert significant influence on the availability of capital in the Canadian property and casualty industry, as Canadian subsidiaries of foreign operations have to compete for capital in the global marketplace. Impacts of world events on investors can affect attitudes towards investments in the Canadian market.

Another major influence on the ability of the Canadian property and casualty market to function is the dependency of the market on its own risk sharing ability, which is achieved through reinsurance. Decisions of the reinsurance market, particularly pricing, are not necessarily made in Canada but rather reflect impacts of worldwide events. In recent years several major global events, including 9/11, the December 2004 tsunami in the Pacific, and the 2006 record hurricane season in the Gulf of Mexico, have restricted the availability of reinsurance to insurers, resulting in higher reinsurance prices. In addition, the insurance market has been significantly impacted by major corporate bankruptcies such as Enron. While these distinct occurrences affect different types of insurance (property versus general liability) they are connected nonetheless through the common factor of reinsurance. Insurers will look to their reinsurers to cover their losses and reinsurers will likely have to raise rates to recover these costs or restrict availability, both of which will ultimately impact consumers.

While Canadians have not been exposed to natural disasters of the scale above, there have been several major weather events in the past decade, including the ice storm of January 1998 affecting parts of Quebec and Ontario and, more recently, the effects of Hurricane Juan on the Maritime provinces. Even with these events in Canada, rates charged by Canadian insurers may be impacted as much by factors outside our sphere of influence, such as global events and occurrences, and high foreign ownership.

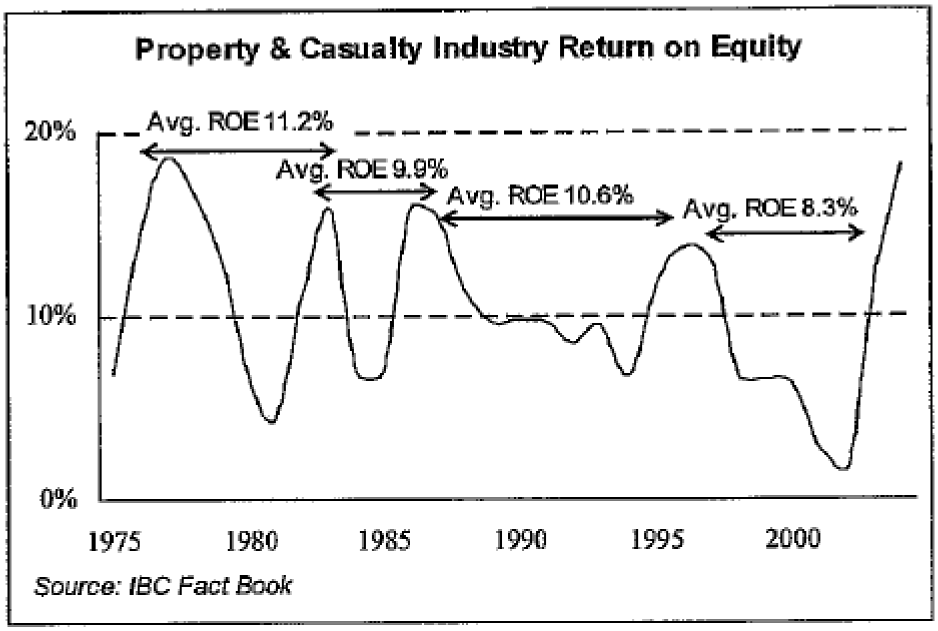
2.1.5 Insurance Cycles and the Property and Casualty Industry

The property and casualty insurance business is cyclical in nature characterized by years of low returns followed by years of higher earnings. The cycles are impacted by a number of factors including:

- a lag in measuring the cost of insurance and its impact on pricing;
- claims costs;
- changing investment returns, which subsidize underwriting results; and
- competitive pressures.

The impact of these cycles are felt by insurance consumers and the industry itself and are described as “hard” and “soft” markets. Hard markets follow periods of low equity returns and are generally characterized by higher premiums and decreased availability or accessibility to insurance by consumers as insurers become more selective in the type of risks they will accept and the price. Soft markets follow periods of higher industry profitability and consumers generally experience increased availability of insurance coverage and products and stable or declining insurance premiums.

The last soft market in North America began in about 1992 and turned to a hard market in about 2000-2001. Over this period the earnings for the property and casualty industry in Canada dropped from a high of over $1 billion in 1996 and 1997 to about $300 million in 2001 and 2002. By about 2004 market turn around was evidenced with better equity returns and improved availability of all insurance products. Historical trending relating to these insurance cycles is illustrated below:



The following statement from IBC describes the Canadian property and casualty industry cycle in terms of its impact on insurers[6]:

> *"Cycles in the Canadian P&C industry typically last six to eight years. Each three- to four- year period of worsening underwriting results has been followed by three to four years of improvement. The hard market of the late 1990s to the early 2000s was the largest downturn since the "liability insurance crisis" of the 1980s. For five straight years, from 1998 to 2002, the industry return on equity was far below its historical average of 10%. These poor returns created an earnings deficit of approximately $4.6 billion. To restore historical average profitability would require at least two years of industry returns in excess of 15%."*

In 2003 OSFI completed a report on the property and casualty industry in Canada in order to better understand the increases in insurance being experienced by consumers in certain regions of the country. According to OSFI:

[6] IBC, Facts of the General Insurance Industry in Canada 2004, pg. 16.

- *"No single factor is responsible for the current conditions in the industry – several factors, taken together, need to be considered.*

- *In the past few years, the scale of claims has been growing, especially for automobile insurance (which represents more than half of the insurance market), reflecting rising medical and rehabilitative claims, rising court awards for pain and suffering in cases of minor strains and pains and an increased number of injury claims that are becoming more expensive to treat.*
- *As a result of competition and controls over automobile insurance premium rates, premium revenue has not kept pace with rising claims, which has resulted in growing underwriting losses. Claims expenses have risen significantly. Other expenses have also risen but far less than claims costs.*
- *Revenues from investment portfolios have declined and have made it more difficult for insurers to generate the income necessary to offset underwriting losses. However, the decline in investment returns is not the largest factor in explaining the pressure on premiums.*
- *Weak profits have contributed to declining return on equity and material erosion in capital levels. These pressures have been further exacerbated by the challenges facing parent organisations in raising new capital, or justifying capital injections into an industry that is producing low returns. As a result, more companies are approaching OSFI's minimum capital target threshold."*[7]

The response of the industry to these circumstances was a tightening of insurance markets as insurers looked to underwriting practices and started to remove certain risks or non-profitable business from their books. Insurers also increased premiums to bring revenues back in line with costs, and in particular to reflect higher claims costs and lower investment returns.

In its written submission to the Board on homeowners insurance IBC described how the public policy response to these hard markets also affects insurance cycles. According to IBC, *"One of the unique features of the cyclical nature of insurance in Canada is that each hard market cycle tends to raise questions about the potential merits of government intervention in the form of increasing regulation of insurance pricing. This is not common in many other insurance markets, and it is also not common in other industries."* The response to the unprecedented increases in auto insurance rates over the last number of years has been increased intervention in markets by regulators, either in the form of rate freezes, roll-backs and/or rate approval regimes. IBC stated that *"Academic research is united in its finding that price regulation exacerbates the insurance cycle. While it is often ushered forward as a tool for providing consumers with greater rate stability, in fact it generates more volatility in insurance prices than market-determined rates."*

According to industry the last hard market has run its course. Reported earnings results for the Canadian property and casualty industry for 2003 were $1.3 billion and $20.4 billion for 2004. While results for 2005 have not yet been released, indications are that financial results for 2005 have weakened compared to 2004. Capitalization problems experienced by industry have eased somewhat and loss ratios have improved as a result of the premium increases and underwriting restrictions implemented by insurers over the last number of years.

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[7] OSFI, Report of the Property & Casualty (P&C) Insurance Industry in Canada, September 19, 2003, pg. 1.

We are now in a soft market period and pressures on premiums and underwriting criteria should ease somewhat. The Board heard from a number of presenters that, in fact, premiums for commercial insurance have stabilized or decreased, although not to the levels experienced prior to the last series of increases. However a caution was expressed by industry that it is hard to predict how long such a soft market will last. Assuming 2004 as the first year of significant recovery for the industry, the years 2007-2008 may start to reflect the beginning of another "hard" market.

The CEOs of Canadian primary insurers are calling in 2006 for *"a steady course on pricing and responsible underwriting in response to their two biggest issues of the year – replenishing capital in the aftermath of US hurricanes and Canadian auto rate reforms."*[8]

2.2 Homeowners Insurance

2.2.1 Definition

Homeowners insurance combines real and personal property coverage with personal liability coverage. It generally provides insurance against damage to the home and its contents, as well as for the legal responsibility for any injuries or property damage caused by the insured or household members to other people or property. The perils for which insurance coverage is provided are broad (e.g., fire, theft, wind, and vandalism) but some perils may not be covered, such as earthquakes or floods. There are also similar personal property policies tailored for tenants and condominium owners.[9]

2.2.2 Policy Forms and Coverages

All property insurance policies have their basis in the original "fire insurance" policies, which is the earliest form of property insurance. As with any product, advances and consumer requirements over time have resulted in variations on the original policy form to meet the increasing demands of the market. Today there are a variety of policies available to suit the needs of most every consumer, from the basic level of coverages, principally fire and some additional perils, to "full" coverage. In reality there is no such thing as "full" coverage as there are certain perils that one simply cannot insure against.

Due to diversification of product and individual marketing strategies of insurance companies it is very much the case that, with the exception of basic coverages mandated in legislation, no two companies offer exactly the same coverage or utilize the exact same policy form or wordings. However, given the homogeneity of residential dwelling risks and exposures, it can be said that with the possible exception of certain coverage features unique to specific companies, the coverages afforded homeowners under a specific form are generally similar across companies.

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[8] Canadian Underwriter, December 2005, pg. 11.
[9] Mercer, Oliver Wyman Actuarial Consulting, Ltd., Study of Homeowner, Commercial Property, Liability, and Marine Insurance, April 2004, pgs. 6-7.

Most homeowners policies are based generally on the IBC Standard Policy forms and wordings. These forms set out homeowners policies as providing coverage under two sections, each of which is subdivided into four parts as follows:

Section I- Property Insurance
- Coverage A – Dwelling Property
- Coverage B – Detached Private Structures
- Coverage C – Personal Property
- Coverage D – Additional Living Expenses

Section II – Personal Liability
- Coverage E – Personal Liability
- Coverage F – Voluntary Medical Payments
- Coverage G – Voluntary Payment for Damage to Property
- Coverage H – Voluntary Compensation for Residential Employees

The limits of insurance for each coverage may be expressed as a sum certain or as a percent of Coverage A limit. In addition, losses payable under certain coverage sections may be subject to a self-insured amount, otherwise known as a deductible.

Insurers write homeowners insurance using three basic policy forms: i) Standard/Basic form; ii) Broad form; or iii) Comprehensive/All Risks form. The Standard form is the basic form and insures against a limited number of perils. The Broad form expands on the coverage provided under the Standard to include other named perils. The Comprehensive policy form usually provides "All Risks" coverage for direct physical loss or damage to insured property. In essence, unless the peril is specifically identified in the policy as being excluded, all losses are payable under a Comprehensive form. It is for this reason that the exclusions in connection with the Comprehensive form are exceptionally important. The Comprehensive and Broad policy forms may also offer coverage extensions that apply automatically or which may be purchased as endorsements.

For each of these homeowners forms there are common exclusions. These exclusions apply to all forms and preclude losses arising to or because of certain conditions, such as buildings used for business or farming; property illegally acquired or kept; vacancy for more than 30 days; radioactive materials; war risks; intentional or criminal acts to name a few. Each policy form may also have exclusions specific to it that would limit coverage. As well, a number of exclusions may be "bought out" by endorsement or coverage may be extended for specific items, such as cameras, jewellery, fine arts, silverware, stamp/coin collections, furs and so forth.

The policy form that would be used to insure a property is the result of the risk selection criteria applied to assess the quality of the property being insured. The quality of the property is generally classified based on factors such as municipal fire protection, age of dwelling, construction, heating appliance(s), and minimum amount of insurance.

To provide similar insurance coverage to those residential dwellers who do not own their own home or who have special needs, there are similar residential policies designed and marketed for tenants, condominium owners, mobile homes, seasonal residence, and secondary homeowners.

2.2.3 Rating and Premiums

The rates an insurer charges in relation to homeowners policies are usually based on available data, including the company's own loss experience. An insurer may also use industry data and loss experience in developing its rates for homeowners policies. Premium rates are generally stated as a rate per $1,000 of main building coverage. There are also additional charges for endorsements or other special features an insurer may offer a policyholder.

Generally the premium rate applied to any homeowners policy is determined by a number of factors. For example, insurers apply a Town Grade, which depends on the level of fire protection available and may reflect factors such as distance from fire protection, housing density, or other risk factors. A Policy Class may also be assigned. The Policy Class for premium rating reflects the fact that different classes (for example Preferred, Economy, Ideal, Standard, Select) may be used within a coverage to reflect potential loss experience based on factors such as occupancy use, age, coverage, quality of construction and value, with each Policy Class having its own rates.

The homeowners policy is a package policy and automatically includes building, personal property and personal liability. Additional coverages, riders and endorsements may be added to the policy to extend coverage already provided, or to effect coverage by removing an exclusion. A rider added to a policy, such as a personal articles floater for such things as jewellery, furs, or special collections will provide increased limits or coverage for the scheduled items with an increase in the policy premium. Likewise, an endorsement added to a policy will change the policy coverage by extending or excluding coverage and may change the policy premium.

A deductible is also applied to homeowners policies. A deductible is a self-insured amount which the insured will bear, with the insurer paying any loss over the deductible amount up to the policy limit for any one occurrence. The standard deductible ranges from $200 - $500. Lower deductibles may be available subject to a premium surcharge, and higher deductible options in amounts of $1,000, $1,500, $2,000, $2,500 are generally available with a corresponding decrease in the policy premium.

The premium for a homeowners policy may also be affected by any surcharges and/or discounts offered by an insurer. An insurer may apply any number of surcharges to a homeowners policy premium because of the possibility of higher exposure to loss, and to reflect factors such as previous claims experience, age of dwelling, supplementary heat, attached dwellings, multi-family occupancy, row housing, or a home-based business. A variety of premium discounts to the homeowners policy may also be offered, which reduces the policy premium. The discounts could reflect factors such as claims free, age of home, age of insured, monitored or unmonitored alarm system, multi-line client, block parent, staff, home under construction, preferred heating, special collections, sponsored group, non-smoker, fire extinguisher, renewal premium, mortgage free, sprinkler system, or quality older home. The level and extent of these discounts and surcharges will vary by insurer.

A minimum retained premium is usually applicable to all homeowners policies in the event the policy is cancelled mid-term by either the client or the insurer. A homeowners premium will generally also increase due to an annual adjustment to account for inflation. Insurers apply this premium adjustment to reflect increases in property value, which prevents the property from becoming underinsured over time.

The scheduled premium rates for tenants, condominium unit, mobile home, seasonal residence, secondary homeowners and residential policies are developed similar to those for homeowners premiums.

2.3 Commercial Insurance

2.3.1 Definition

Commercial insurance is provided in much the same manner as automobile and homeowners insurance through the use of agents, brokers or direct sellers. Unlike homeowners insurance, commercial insurance is provided separately for property and for liability. The commercial property policy insures against loss or damages to physical property owned by the insured, such as buildings and assets. The commercial liability policy indemnifies an insured for negligent acts committed by them, which give rise to bodily injury and/or personal injury to a third party, or damage to the property of others for which they are legally liable. Coverage of this nature is provided under a form called a Comprehensive General Liability Policy or a Commercial General Liability Policy.

2.3.2 Commercial Property Policy Forms and Coverages

The commercial property insurance policy is equivalent to the homeowners policy in that it indemnifies the insured against loss of or damage to own property as a result of an insured peril. The policy provides first party insurance to the insured and the insurer settles claims directly with the insured. Unlike homeowners insurance, which is provided on one of three basic policy forms, commercial property insurance has a number of specialized forms for various types of insurable risks. IBC's website provides a listing of some 90 available property policies for download. These policy forms contain policy wordings that may be adopted by the insurer outright or may be varied by the insurer to meet their particular marketing needs. These include policy forms as well as endorsements that limit or expand coverage for specific risks or perils.

In addition, unlike the homeowners policy, which combines property insurance with personal liability insurance, commercial property policies insure only the property component, or the physical structure and contents, of a commercial operation. Liability coverage protection must be purchased under a separate policy.

2.3.3 Commercial General Liability Policy Forms and Coverages

It is highly unlikely that a commercial operation would not have a requirement for a commercial liability policy. Commercial operations having any interaction with the public or others, or that are engaged in the production or manufacturing sector or the supply of goods or services, or that operate as a community or service group, to name a few, have exposure to potential liability from their products, actions and activities. The commercial general liability (CGL) policy is designed to provide protection in these pursuits. The CGL policy is not limited to business operations. It is also used by non-profit organizations, community assistance groups and voluntary groups to provide protection to the organization, its employees, volunteers and their assets in the event of an action against them by a third party arising from their operations or activities.

The CGL policy provides indemnity to the insured under four separate sections as follows:

a. **Bodily injury or property damage to others**. This provides indemnity to the insured for bodily injury or property damage caused to a third party subject to the insuring agreement, and for which the insured is legally obligated to pay.

b. **Personal injury liability to others**. This provides coverage against unintentional personal injury, other than physical bodily harm, occasioned through slander or liable, including false arrest, detention or confinement against one's will.

c. **Medical payments**. This is a no-fault coverage where the policy will pay certain medical expenses on a good will basis.

d. **Tenants' legal liability**. Property that is not owned by an insured but which they occupy through lease or rental agreements is excluded from coverage under section A of the CGL. Occupants of rental premises face significant exposure that may include damage to non-owned premises arising from fire, smoke, explosion or leakage from fire protective equipment.

Each section of the CGL policy is sold separately under a single policy form and an insured may choose not to purchase a specific section or sections depending on individual needs. Each section provides an insuring agreement identifying what coverage the policy provides and outlines the exclusions and exceptions to coverage.

As the CGL policy is comprehensive, or all-inclusive, it is the policy exclusions and exceptions which frame the coverage provided. These exclusions often give rise to the need for additional coverage which, in certain cases, can be purchased as separate policies, or as endorsements to the liability policy. A number of exclusions are common to all sections while others apply only to a specific section of coverage. Common exclusions include pollution liability, nuclear energy liability and war risks. Other specific exclusions for which the insured may need to purchase separate policies may include professional liability, directors' and officers' liability, injury to workers, automobiles and insured's owned premises.

As with any insurance product the terms of the CGL policy may be changed by insurers to reflect global or local circumstances such as the Y2K issue and potential losses that may have arisen from the loss of data. More recently the advent of the internet and potential liabilities that may arise from e-commerce or "cyber perils" are under active consideration by some insurers.

2.3.4 Rating and Premiums

Unlike homeowners insurance, where the risks are generally homogeneous across insureds, commercial risks are individually rated to reflect the wide range of activities and risk exposures. The determination of premiums for commercial property and liability policies is usually based on a detailed underwriting assessment of the risk represented by the particular insured's operation. The extent of the assessment will depend on the nature and type of activities involved as well as the underwriter's understanding of the operations and potential risk exposures. The assessment may involve an application as well as an inspection, survey, or an adjuster's report.

In addition to the risk assessment commercial insurance premiums will also be affected by several factors such as market conditions, uncertainty associated with future claims, costs and conditions for reinsurance, the insurer's risk appetite, deductibles and coverage, risk management practices, and others depending on the insurer's business model.

Ultimately the underwriter's observations, individual assessment and evaluation of the risk based on knowledge and experience is key in determining the commercial premium to be paid. Because of the manner in which commercial premiums are set it is likely that two underwriters will arrive at entirely different premiums for the same risk because of the subjective nature of the risk assessment process and the level of underwriter judgement that comes into play.

Because of the case-by-case nature of commercial rating and premium determination commercial insurers could not provide detailed premium information in a form that could be used by the Board as part of this review.

2.4 Information and Data Requests

As referenced earlier the Board began this review following completion of a detailed and comprehensive review and report in relation to automobile insurance in the Province. During the automobile insurance review there was detailed actuarial and financial information available along with analysis and presentations by a number of experts. This permitted the Board to conduct a full review of both qualitative and quantitative issues in the context of the Terms of Reference.

Conversely, in this review of homeowners, commercial and marine insurance, credible information was not readily available. Because automobile insurance rates are regulated across the country detailed information is collected and maintained by the various authorities in relation to automobile insurance. This is not the case for either homeowners, commercial or marine insurance. Due to the lack of available information it was first necessary to try and collect some basic data before any reasoned review or analysis could be undertaken.

2.4.1 Review of Available Information and Data

In this Province detailed information regarding automobile insurance is collected by the Superintendent of Insurance in accordance with the provisions of the *Insurance Companies Act*. The Superintendent of Insurance has designated IBC as the official statistical agency for collection of data required for the regulation of automobile insurance in the Province. The data compiled by IBC under the Automobile Statistical Plan, commonly known as Green Book Data, has been regularly used by the Board in the regulation of automobile insurance rates. In addition, through its ongoing regulatory supervision of automobile insurance rates, the Board has extensive information available on a company specific basis with respect to rates, underwriting guidelines, risk classification and other matters relating to automobile insurance.

Other than the Automobile Statistical Plan the only other mandated statistical plan in Canada is for commercial liability data in Ontario. This plan, called the Commercial Liability Statistical Plan, was developed and implemented effective January 1, 1990 in response to recommendations made in 1986 in the Ontario Task Force on Insurance following significant increases in premium levels associated with liability insurance in Ontario. The Plan was designed to capture information and loss data related to commercial liability claims only under the CGL. Data is collected from insurers by IBC at a high level and various exhibits provide more specific details in respect to large losses, claims location, policy limits, paid losses and market share distribution to name a few.[10]

The primary source of information about homeowners, commercial and marine insurance in the Province is the information collected by the Superintendent of Insurance on the mandatory P&C 1 and P&C 2 forms which are filed annually by all insurers operating in the Province, whether federally or provincially regulated. These forms provide the premiums earned and losses incurred by insurance companies for the Province by product line (personal property, commercial property, and commercial liability) Because the data is presented in aggregate form, it does not include detailed data related to specific risks or claims for the product line, nor does it contain any breakdown of premiums and losses for specific types of risks, such as the voluntary sector or liquor serving establishments. This information was used by Mercer in completing its 2004 report, and the limitations of the data for the analyses performed in that study were set out in the report.

Until 2004 IBC collected information for personal property, commercial property and commercial liability as part of its voluntary statistical plans. This information was provided to IBC on a voluntary basis by insurers across Canada and then edited and compiled by IBC for publication annually in a series of reports or “books”. Personal property data was presented in the “Brown Book”, commercial property data in the “Red Book” and commercial liability data in the “Blue Book”. The information collected included written premium, earned premium, reported incurred losses and legal expenses, number of claims, average size of claims and

[10] Nova Scotia Insurance Review Board (NSIRB), Report on Rates and Availability of Fire, Other Property and Liability Insurance for Homeowners, Tenants, Non-Profits Organizations and Small Businesses, November 1, 2004, Appendix – Exhibit 15 of NSIRB’s report contains a detailed description of the Commercial Liability Statistical Plan in Ontario, including a description of the Exhibits and Reports prepared by IBC and FSCO Statistical Services.

reported loss ratios, categorized by province. The personal property data published in the Brown Book is provided by type of dwelling, type of loss, type of occupancy, size of policy, territory and protection grade, and policy form. The commercial property and commercial liability data was presented by major classes (farming, mining, and manufacturing) and within the classes by industry codes.[11]

The IBC statistical plans for commercial property and commercial liability have been discontinued as of June 2005 and the information is no longer collected. While the NSIRB reported that approximately 50% of insurers voluntarily reported their property and liability data to IBC, industry participation rates in the plans have been decreasing, dropping to as low as 15%. In responding to questions from the Board on the commercial liability plan during a meeting an IBC representative stated:

> *"It was in place on a voluntary basis, and we had – for outside Ontario, we had shut down the plan a year ago and our participation rate was down below 20 percent of the rest of Canada. There are a couple of reasons for that. The plan is a little out of date. One of the other issues with the plan, it's an annual plan and when you're looking at statistics produced annually, they reflect events that happened a year and half ago. So there are some inherent problems in the plan that made it not useful for insurers, which is why they stopped collecting it for everywhere else except where it was mandated."*

The personal property statistical plan is still operational according to IBC.

Concerns with the availability and credibility of existing data were also encountered by the NSIRB during its review. After a review of the most recent IBC reports the NSIRB's study consultants concluded that the information was inadequate to enable any assessment of whether the rate and underwriting actions taken by insurers in Nova Scotia are justified. The available data was found to be relatively old; representative of the experience of only between 40%-50% of the insurers operating in Nova Scotia and Canada-wide; lacking important information; and insufficiently detailed.[12] The specific concerns identified in the NSIRB report with the available data were:

i) Timeliness of the data - it can be up to two years before the collection, compilation and release of the data.
ii) Limited participation - only about half of insurers report data.
iii) Important information is not available - all reserves are not reported
iv) Insufficient detail - some useful information is not collected as a result of the way in which the information is coded.
v) Reporting inconsistencies - the coding is not sufficiently precise to ensure consistent reporting.

The NSIRB recognized that additional information was necessary and as part of its review sent a detailed questionnaire to insurers in Nova Scotia seeking information on a wide variety of issues. The summary of the responses to this questionnaire were appended to the NSIRB report. This

[11] NSIRB Report, pg. 37.
[12] NSIRB Report, pg. 36.

summary is instructive in the context of this review to the extent that it provides information which speaks to issues relevant to Atlantic Canada and the operations of the insurance industry in general. To some degree it is also serves to confirm the difficulties associated with supplementing existing available data.

Since the Board has no regulatory role with respect to homeowners, commercial or marine insurance in the Province, there is no requirement for the Board to collect or maintain any data in relation to these insurances. As a result, for this review, the Board has relied on existing data collected by other agencies, such as the P&C 1 and P&C 2 forms filed by insurers with the Superintendent of Insurance, or as part of previous studies such as the NSIRB.

2.4.2 Information Requested

Given the lack of useable information available to address the specific issues raised in the Terms of Reference, as part of this review the Board collected its own supplementary information in relation to homeowners, commercial and marine insurance in the Province.

The Board issued a specific request to homeowners and commercial insurers for data related to premiums written, claims paid, rates, profitability and underwriting practices. A copy of the information request and a summary of the responses from insurers for both homeowners and commercial insurance is provided in Exhibits 2 and 3. Information was also gathered during the review through additional requests for information, written correspondence, and meetings with insurers, IBC and IBAN as well as other stakeholders. To the extent that the data and information collected was informative in relation to the particular issues being considered by the Board in this review, it is referenced in the appropriate section of this report.

It should also be noted that, in providing the information, several insurers expressed concern with regard to the sensitive nature of some of the information sought. Because much of the information requested was particular to the operations of the individual insurers, the release of this information was viewed as having the potential to cause harm to the business interests of the insurers. Almost universally insurers made a claim for confidentiality with respect to some of the information provided to the Board.

The Board acknowledges that the insurance industry in the Province is a competitive one whereby each insurer maintains a unique business, marketing and financial position and, as such, it is clear that some of the detailed information requested may be considered to be sensitive in nature. To respect these concerns and given that the review is being conducted in relation to the broad industry, all information collected was generalized so as to remove any reference to a particular company, either by name or otherwise.

2.4.3 Comments on Information Provided

As can be seen in the summary information provided in Exhibits 2 and 3 there was a wide variety in the amount of information available and the level of detail provided in the responses to the questions. In some cases the insurers advised that the information was not tracked in any form and so could not be provided. Even where the information was recorded by insurers it was often not useable on an aggregated basis due to significant differences between insurers as to how the data was captured and classified, as there is no uniform classification system in place. As an example, while personal liability coverage is provided in the homeowners policy form, some insurers advised that losses associated with this coverage are reported under their liability results, which includes commercial general liability. The reason given was that this is the way the re-insurers want the data reported.

In the case of specific data on refusals, premium data and loss ratios for commercial insurance, this information could not be provided by any of the insurers since the companies do not track this detailed data by type of risk. In relation to rating manuals and underwriting rules, insurers advised that for many medium to large-sized risks related to commercial insurance, individual risk assessments are undertaken, including surveys or inspections of facilities and operations. This individual risk assessment makes a rating manual not only impractical, but all but impossible to produce for commercial insurance as no two risks are the same.

The diversity of the operations of the participating commercial insurers was also a factor in the Board's ability to collect data relating to the review. Several of the top insurers by premium volume in the Province only offer products to large commercial operations, which may be national or international in scope. The information provided by these companies was of limited use given that a company may only insure a few very large customers in the Province. It is also worth noting that some of the largest insurers are national insurers for whom the business written in this Province represents a very small portion of the Canada-wide business. For these reasons the information provided by each of the participating companies in relation to commercial insurance may not be representative of the provincial market for the type of risk being considered.

Another example of the difficulties faced is the collection of relevant information relating to the request for data on profits. The Board requested that each participating insurer provide *"A schedule showing the profit for this line of business in this province for each of the last ten years."* Almost universally companies reported that they were not able to provide this data. After further discussions it became clear that, for the most part, this information was not collected by the insurers. Nevertheless the Board requested the insurers make their best efforts to provide the required information respecting provincial profitability by line of business. It was acknowledged that, while return on equity and return on investment could be provided, the information would have limited usefulness as it was generally only available for five years rather than ten years as requested. It was also noted that several key assumptions would have to be made in the compilation of the data. Ultimately the participating companies provided the Board with a completed spreadsheet setting out premiums, claims, expenses, return on investment, return on equity and other miscellaneous items. Some companies provided some of the information for some of the years, while others provided the information requested but in a format that could not be used by the Board in any summary review. The implications of this particular issue with respect to the Board's review of the issue of profitability are discussed further in Section 3.4.

Despite the best efforts of the participants in this review, including the insurers and brokers, the lack of credible statistical data, segmented by line of business and coverage, limited the Board's ability to make determinations as to the level of profits, the adequacy of current rate levels and, in particular, prevented the Board from making an informed observation as to the reason behind recent large premium increases reported for some insurance products. Conclusions relating to other more qualitative issues surrounding underwriting practices were also difficult. Possible solutions to these data limitations are discussed later in Section 6.8 of this report. Notwithstanding these limitations the Board used the available data to the greatest extent possible in undertaking its analysis and preparing this report.

3.0 PROFILE OF HOMEOWNERS AND COMMERCIAL INSURANCE IN NEWFOUNDLAND AND LABRADOR

3.1 Introduction

The homeowners and commercial insurance market in Newfoundland and Labrador has several distinguishing characteristics in relation to the overall Canadian property and casualty market. Most of these characteristics have to do with the relative size of the provincial marketplace and the reduced level of competition that exists as compared to other larger jurisdictions. This profile of the insurance industry in Newfoundland and Labrador describes the market structure for homeowners and commercial insurance and highlights the premiums and claims experience for both. In addition, this section endeavors to the extent possible to present some insight into the national and provincial profitability pictures on an industry-wide and product specific basis.

3.2 Homeowners Insurance

3.2.1 Market Structure

As with automobile insurance the homeowners insurance market in Newfoundland and Labrador is concentrated among a limited number of companies. Data contained in the following table was obtained from the 2004 Annual Report of the Office of the Superintendent of Insurance and shows that, for personal property insurance, nine companies combined wrote $59,699,000 in direct written premiums during 2004, representing 86% of the total homeowners insurance market[13]. By comparison, the total net premiums written in Canada in 2003 for Personal Property, as reported by IBC, were $4,452,000,000[14]. The Newfoundland and Labrador market comprised approximately 1.6% of this total.

The following table shows the direct premiums, earned premiums and direct claims for the top personal property insurers by premium volume in the Province as of December 31, 2004:

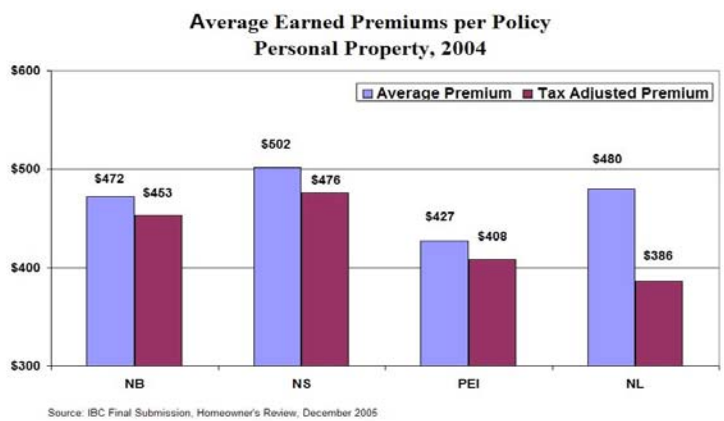
[13] The 2004 Superintendent's Report shows 43 companies reporting premiums or claims under the heading Personal Property. The Report does not specify the premium and claims data as being related exclusively to homeowners insurance and as a result, a number of specialty insurers offering insurance for such things as Credit, Property Title and other miscellaneous classes of property insurance, report their data under the personal property section.
[14] IBC, Facts of the General Insurance Industry in Canada 2004, pg. 14.

Top Personal Property Insurers (by premium volume) Province of Newfoundland and Labrador For the year ended December 31, 2004 ('000's omitted)			
Company	**Direct Premiums**	**Earned Premiums**	**Direct Claims**
Unifund Assurance Company	$16,313	$15,761	$ 6,705
Co-operators General Insurance Company	12,712	12,056	4,646
Aviva Insurance Company of Canada	10,088	9,372	5,275
Insurance Corporation of Newfoundland	6,583	6,121	2,793
Metro General Insurance Corporation	4,570	4,760	2,023
Dominion of Canada General Insurance Company	4,071	3,522	1,138
Colonial Fire and General Insurance Company	2,191	2,137	966
Federation Insurance Company of Canada	1,849	1,740	553
Atlantic Insurance Company Limited	1,322	1,333	694
Total	**$59,699**	**$56,802**	**$24,793**

Source: Table V, 2004 Report of the Superintendent of Insurance for Newfoundland and Labrador.

3.2.2 Average Premiums

According to IBC the average earned premium for a personal property insurance policy in 2004 in Newfoundland and Labrador was comparable with other Atlantic provinces, as shown below:



These tax-adjusted premiums exclude the impact of premium taxes. The premium tax is levied on an amount that includes provision for the cost of the HST (or PST and GST) in claims and general expenses. A 15% retail sales tax is then levied on an amount that includes HST and premium taxes.[15]

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[15] The effective tax rate on insurance premiums in this Province is 19%, compared to 4% in New Brunswick, 5.25% in Nova Scotia, and 4.5% in Prince Edward Island. The issue of taxation on insurance products in this Province is discussed in Section 6.9.1 of this report.

In an effort to assess the range of premiums and coverages for homeowners insurance available in the Province and the impacts of deductibles on these premiums, the Board sent an information request to participants to the review requesting they rate a specified risk, located in the following communities in the Province: St. John's; St. Anthony; Labrador City; and Terrenceville. The information provided by companies indicated the undiscounted cost of a Broad Form policy and a Comprehensive Form policy, based on the designations Protected, Semi-Protected and Unprotected to identify the level of fire protection available in the community. The companies also provided the differential factors for various deductible levels beyond the company's base deductible amount. The information obtained as a result of this information request is summarized below.

i) Rates

It was noted that two of the companies subdivide the City of St. John's into different rating codes, using the first three characters of the postal code as indicators. The divisions appear to be loosely based on factors such as average age of properties and construction density, with the downtown area being classified as a higher risk than other areas. The codes essentially represent which of a multitude of rate schedules is to be used to rate the risk. One company has a different rate schedule for older homes while another has a special rate schedule for downtown exposures. One company has two classifications for all its policies, one designating the risk as a preferred or better than average risk and the other designating the risk as a standard risk. The rates for all companies vary by the designations of Protected, Semi-Protected and Unprotected.

Reported premium information is provided in the following tables:

Homeowners Rates Protected Area*				
Community	**Broad Form**		**Comprehensive Form**	
	Range	**Average**	**Range**	**Average**
St. John's	$318 - $549	$441	$347 - $587	$502
St. Anthony	347 - 884	524	389 - 920	583
Labrador City	347 - 884	520	389 - 920	578
Terrenceville	347 - 620	479	389 - 663	541
Homeowners Rates Semi-Protected Area*				
Community	**Broad Form**		**Comprehensive Form**	
	Range	**Average**	**Range**	**Average**
St. John's	$404 - $874	$564	$432 - $922	$642
St. Anthony	473 - 945	638	543 - 980	714
Labrador City	414 - 945	631	543 - 980	705
Terrenceville	381 - 874	578	409 - 922	652
Homeowners Rates Un-Protected Area*				
Community	**Broad Form**		**Comprehensive Form**	
	Range	**Average**	**Range**	**Average**
St. John's	$519 - $1,474	$909	$616 - $1,692	$1,058
St. Anthony	519 - 1,474	929	616 - 1,692	1,068
Labrador City	519 - 1,474	929	616 - 1,692	1,068
Terrenceville	519 - 1,474	929	616 - 1,692	1,068

*Premiums are those reported by insurers in response to a specified risk profile.
Rates include 4% premium tax but exclude 15% retail sales tax.

As shown the reported premium information indicates a wide range of available premiums for similar coverage under each of the policy forms. There is also not much difference in the average premium levels in different parts of the Province, for the same policy form and coverage level. Premiums also vary significantly depending on access to fire protection. The average earned premium in this Province as reported by IBC is consistent with the reported average premium levels for protected areas for both broad and comprehensive forms.

ii) Impact of Deductibles on Premiums

Premium information provided in the preceding tables is based on a standard deductible of $500.00. Premiums will vary for different deductibles. The following table provides the impacts on rates of a range of deductible options, as reported to the Board:

Impact of Deductibles on Homeowners Premiums		
Deductible Level	**Deductible Impact**	
	Range	**Average Reduction**
$ 500	1.00	0%
$1,000	.80 - .90	15%
$2,000	.75 - .83	23%
$2,500	.70 - .80	25%

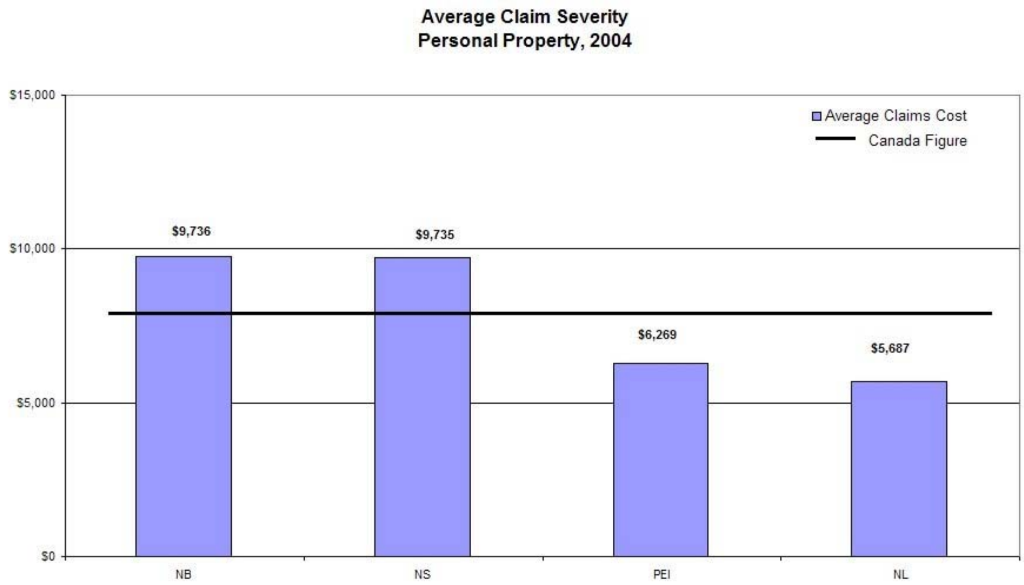
The deductible level has a significant impact on premiums, with average reductions of 15% to 25% for deductibles of $1,000 and $2,500 respectively. The reduction in premium associated with higher deductibles appears to level off at the $2000 - $2500 deductible level.

3.2.3 Claims Experience

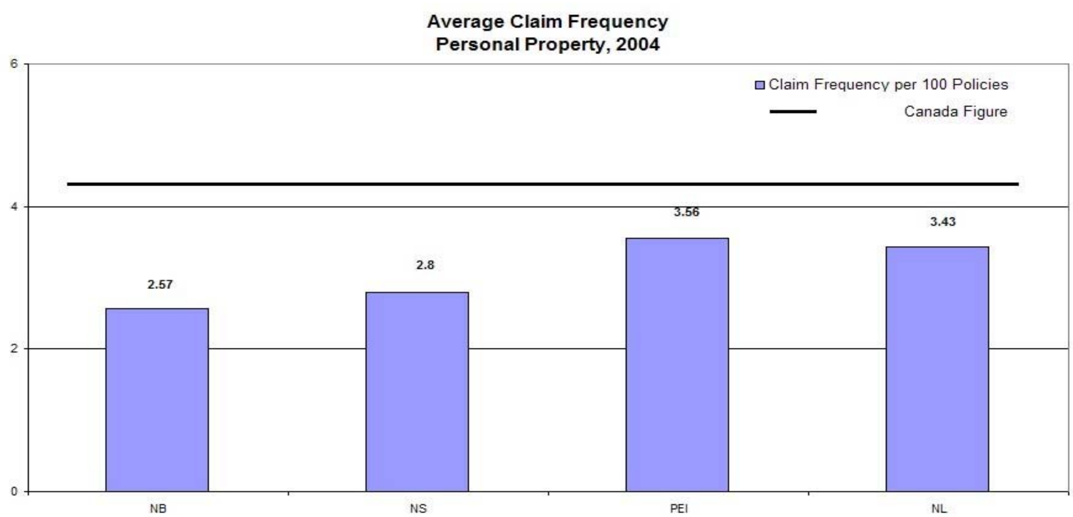
In 2003 $4.452 billion in net premiums were written for personal property insurance in Canada while the value of claims incurred was $2.574 billion.[16] According to IBC, in 2003 theft accounted for 22% of all homeowners' claims in Canada. Other causes, including hail and wind, accounted for about 39% of all claims. Water damage to homes comprised 27% of claims, and fire accounted for 12%.[17]

In its written submission on homeowners insurance IBC reported that, based on 2004 data, the average cost of claims in Newfoundland and Labrador was the lowest in Atlantic Canada. However the average claim frequency, while lower than the national average, was just slightly lower than Prince Edward Island and higher than New Brunswick and Nova Scotia. This is reflected in the following charts.

[16] IBC Facts of the General Insurance Industry in Canada 2004, pg. 14
[17] IBC Facts of the General Insurance Industry in Canada 2004, pg. 6



Source: IBC Final Submission, Homeowner's Review, December 2005



Source: IBC Final Submission, Homeowner's Review, December 2005

The claims experience in the Province can also be evaluated in the context of a loss ratio, which is the ratio of the losses, including claims handling expenses, to premiums. This tool is a yardstick to determine if the premiums are at a level that will recover the costs of providing insurance. There are a number of sources of information with respect to loss ratios in the Province and region as set out on the following page:

- According to Mercer's 2004 report, the average loss ratio of all insurance companies that wrote personal property insurance in the Province over the ten-year period 1993-2002 was reported to be 46%, significantly lower than the suggested reasonable loss ratio of 60%. Significant variability was also noted from year to year with the worst loss ratio of 85% in 2001.

- A similar analysis of this issue was conducted as part of the NSIRB's review. The year-to-year variations for the period 1998 to 2002 in Nova Scotia seem to mirror the year-to-year variations found in the Mercer report but generally worse results are documented in Nova Scotia for the same years.

- As part of this review the Board sought information from the participating insurers as to direct premiums written and direct claims paid, including claims expenses, in the Province for personal property insurance for the last ten years. All but one of the participating insurers were able to provide this information for the five-year period 2000-2004. (See Exhibit 2) Based on this information the five-year average loss ratio for the participating insurers over the period was about 56%. It should be noted that there was considerable variability from year to year, with the worst loss ratio of 85% in 2001 and the best loss ratio of 42% in 2004.

- In a written submission to the Board the Consumer Advocate presented certain financial information for 2003 based on information filed with the Office of the Superintendent of Insurance. This information shows an average loss ratio for personal property for 2003 of 37% as compared to the average as reported during the review for 2003 of 52%. It should be noted however that the 37% figure is based on results of only four companies.

- The Consumer Advocate further offered loss ratios from the 2004-2005 Brown Charts prepared by Stone & Cox Ltd., which are based on national information provided by the majority of the market. The loss ratios suggested by the Consumer Advocate based on the Brown Charts for 2003 and 2004 are different than those suggested by IBC in its submission. The loss ratios referenced in the IBC submissions as being from the IBC's Brown Book are based on approximately 40% of the Canada-wide market and have been adjusted to reflect a number of items such as the elimination of personal property only data. The result of these adjustments is a less favourable loss ratio for both years and an average loss ratio over the five years of 66%, compared to the average 56% suggested by the data collected as part of the review.

- Information reported by Canadian insurers to OSFI on a Canada-wide basis shows more consistent results which are in line with expected ratios over the period.

The following table summarizes the reported loss ratios for the Province from various sources and also provides the loss ratios from Nova Scotia for comparative purposes:

Homeowners/Personal Property Reported Loss Ratios 2000-2004* (%)						
SOURCE	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
Mercer 2004 Report-Personal Property	52	85	49	-	-	-
NSIRB						
1) Nova Scotia Personal Property	65	101	81	-	-	-
2) Canada Personal Property	64	67	70	-	-	-
3) Nova Scotia Homeowners	71	118	93	-	-	-
4) Canada Homeowners	73	78	80	-	-	-
Information Provided in Review-Personal Property	57	85	57	52	42	-
Consumer Advocate						
1) Superintendent – Personal Property	-	-	-	37	42	-
2) Brown Book – Personal Property	-	-	-	47.5	-	-
IBC Newfoundland and Labrador Homeowners	59	116	57	46	46	-
OSFI **– Personal Property	67.89	67.62	64.40	63.30	62.31	68.65

* The loss ratios reported in this Table are from different sources and are based on different information and methodologies. As such comparison should be made carefully.
**OSFI Website Reported Claims ratios.

While the information upon which each of these considerations of loss ratios is based is different there are some similarities. It is clear that the average loss ratios for personal property were variable with poor results in 2001 and good results in 2004. In addition the average loss ratio over the five-year period would seem to be close to Mercer's suggested 60% loss ratio standard of reasonableness, with IBC reporting a 66% loss ratio and the review data suggesting a 56% loss ratio.

3.3 Commercial Insurance

3.3.1 Market Structure

The commercial insurance market in the Province is less concentrated than the homeowners insurance market. As is illustrated in the following table, 19 of the 64 commercial property insurers in the Province account for 90% of the written premiums for commercial property, compared with only 9 companies for the same market share for homeowners insurance:

Top Commercial Property Insurers (by premium volume)
Province of Newfoundland and Labrador
For the year ended, December 31, 2004
('000's omitted)

Company	Direct Premiums	Earned Premiums	Direct Claims
Lombard General Insurance Company of Canada	$ 7,133	$ 6,965	$ 819
Co-operators General Insurance Company	5,500	5,035	1,851
Factory Mutual Insurance Company	4,710	4,330	5,068
Aviva Insurance Company of Canada	4,421	4,341	4,083
Royal and Sun Alliance Insurance Company of Canada	3,964	3,937	3,533
American Home Assurance Company	3,950	4,615	307
Atlantic Insurance Company Limited	3,420	3,382	1,664
Dominion of Canada General Insurance Company	2,684	2,599	1,647
Lloyd's Underwriters	2,151	0	-935
Sovereign General Insurance Company	1,595	1,614	979
Zurich Insurance Company	1,108	1,416	218
Economical Mutual Insurance Company	1,049	511	511
Gerling Canada Insurance Company	733	862	107
Scottish & York Insurance Company	708	641	187
Ace INA Insurance	657	775	154
GCAN Insurance Company	654	691	124
Citadel General Assurance Company	647	640	16
Metro General Insurance Corporation	564	567	200
St. Paul Fire and Marine Insurance Company	554	626	-162
Total	**$46,202**	**$43,547**	**$20,371**

Source: Table V, 2004 Report of the Superintendent of Insurance for Newfoundland and Labrador

The following table shows the top commercial liability insurers by premium volume in the Province:

Top Commercial Liability Insurers (by premium volume)
Province of Newfoundland and Labrador
For the year ended, December 31, 2004
('000's omitted)

Company	Direct Premiums	Earned Premiums	Direct Claims
Lombard General Insurance Company of Canada	$ 5,168	$ 4,935	$ 4,123
American Home Assurance Company	3,755	4,020	3,460
Atlantic Insurance Company Limited	2,674	2,548	937
Co-operators General Insurance Company	2,503	2,223	279
Lloyd's Underwriters	2,480	0	9,377
Aviva Insurance Company of Canada	2,422	2,259	3,287
Ace INA Insurance	2,399	1,738	513
Royal and Sun Alliance Insurance Company of Canada	2,358	2,021	2,126
Commerce and Industry Insurance Company of Canada	1,804	1,753	1,207
Chubb Insurance Company of Canada	1,709	1,373	410
Healthcare Insurance Reciprocal of Canada	1,386	1,386	5,475
Temple Insurance Company	1,261	1,478	-251
Dominion of Canada General Insurance Company	1,119	1,058	1,460
Continental Casualty Company	1,093	1,124	690
St. Paul Fire and Marine Insurance Company	993	789	875
Liberty Mutual Insurance Company	948	1,008	749
Employers Reinsurance Corporation	902	724	55
Zurich Insurance Company	894	909	458
Sovereign General Insurance Company	800	720	301
Scottish & York Insurance Company	787	695	1,360
Commonwealth Insurance Company	569	659	1,339
Total	**$38,024**	**$33,420**	**$38,230**

Source: Table V, 2004 Report of the Superintendent of Insurance for Newfoundland and Labrador

Of the 68 companies reporting premiums for commercial liability, 21 companies write approximately 90% of the premiums. As part of the Canada-wide market the Newfoundland and Labrador Commercial Property market comprises approximately 1.1% of the total premiums and Commercial Liability accounts for approximately 1.0%.

3.3.2 Premiums and Loss Experience

In conducting the review the Board requested information from thirteen companies representing 73% of the commercial property insurance market and 65% of the commercial liability insurance market, based on 2004 figures.

One of the requests was for a summary of direct written premiums and direct claims paid for the last ten years. Twelve of the companies responded with this information, but only for a five-year period. The information reported indicates an average loss ratio of 61.5%, ranging from a high in 2001 of 102% and a low in 2002 of 31.2%.

The companies were also requested to supply base premiums for commercial property and liability insurance for the same period. In response, four of the thirteen provided the level of change in average written premium per exposure as opposed to the average change in rate. The premium to exposure figure would be impacted by several factors not attributable to an increase in the "base rate" such as increase in coverages, change in risk, inflation, and change in reinsurance markets. These factors result in a change in premium for the insured but are not driven by an increase in base rate.

Information supplied by the companies responding to this request indicates the average premiums were increasing for some companies and decreasing for others, as summarized in the following tables. It must be noted that the percentage change cannot be added to arrive at a change in rates over the four-year period.

Changes in Average Premium[1] Commercial Property Newfoundland and Labrador Market Share Represented 26.8%		
Year	**High**	**Low**
2004	+5.0%	-14.7%
2003	+27.6%	-4.7%
2002	+36.1%	-4.2%
2001	+24.3%	3.1%

Changes in Average Premium[1] Commercial Liability Newfoundland and Labrador Market Share Represented 16.3%		
Year	**High**	**Low**
2004	+9.6%	+0.4%
2003	+27.6%	+15.0%
2002	+27.8%	+17.0%
2001	+14.9%	+3.6%

[1]Based on information reported by insurers to the Board

3.4 Industry Profitability

3.4.1 Introduction

While Government did not direct the Board to conduct a comprehensive analysis of insurance profits by product line, the Terms of Reference required that issues raised in relation to homeowners and commercial insurance be considered within the context of industry profitability. Specifically Government's Terms of Reference for the review of both homeowners and commercial insurance mandated the Board to *"Report on issues which may be raised surrounding availability and accessibility of this insurance in light of associated profit margins…"*

The issue of insurance industry profits was also raised before the Board during its recent review of automobile insurance. A number of presenters in that review referred to the high levels of profit attributable to the insurance industry in Canada. Data released by IBC at the time showed estimated combined net earnings for 2004 of $4.2 billion, yielding a shareholders return on equity of 20.6% on average for Canada's 206 home, auto and business insurance companies. A number of the comments heard by the Board during the automobile insurance review questioned this level of profitability in light of the unprecedented increases in automobile insurance rates being experienced by consumers.

In its March 2005 report to Government the Board concluded:

> *"Unfortunately neither the IBC nor the Superintendent of Insurance maintains the detailed statistics necessary to determine the segregated profit by line of business by province. The statistical data collected by the Superintendent of Insurance could be reviewed bearing in mind not only improved regulation and compliance but formulation and development of public policy. These measures should not only reflect underwriting profits/losses but return on investments (ROIs), annual earnings and return on equity."*

Given the difficulty experienced during the automobile insurance review regarding the lack of useful profit information, in addition to examining various studies and other available data relating to the profitability of the property and casualty industry in Canada, the Board requested specific financial information from homeowners and commercial insurers operating in the Province. (See Exhibits 2 and 3) The Board's objective in reviewing this data was to try and establish whether or not the premiums are reasonable, balancing a fair return for the industry versus sustainable prices and availability of insurance products for consumers.

3.4.2 Basic Terminology

Before considering the issue of profitability it may prove helpful to outline the basic terminology used by insurance companies when defining profits. An insurance company has three sources of revenue contributing to profit:

1. Investment income which is earned on the premiums collected;
2. Investment income which is earned on the surplus carried; and
3. Underwriting profit which represents the difference between the premiums charged and the costs incurred. Costs include both claims costs and operating expenses.

According to OSFI *"Slightly more than one-half of the assets are allocated to the investment portfolio to generate income. Assets, other than investments, generally reflect amounts due from policy holders or recoverables from reinsurers."* OSFI reports that, in the last twenty years, premiums did not on average cover expenses in any year thereby making investment income critical.[18]

[18] OSFI Report, pg. 5.

Profitability in the insurance industry is measured in one of two ways. The first, return on equity, is the more universal measure. The second, percent of premium, is unique to the insurance industry and involves the loss ratio, which is the ratio of premiums to losses and expenses. Simply put, when the three sources of revenue are expressed as a percentage of equity (also referred to as surplus or invested capital), the result is referred to as return on equity (ROE). Similarly, when expressed in terms of total premium, the result is referred to as a percent of premium (also referred to as return on premium).

Both measures of profitability are used in the insurance industry. The ROE is perhaps the more meaningful measure of profitability for insurance company managers, owners, and investors because it is the measure of profitability used by other industries - hence it provides not only a basis for comparing performance within the industry but also reflects the competing opportunity for investment in insurance relative to other sectors. However, the percent of premium may be the most meaningful measure of profitability for purchasers of insurance since it relates to the amount of premium paid.

3.4.3 Submissions, Presentations and Comments

In his January 4, 2006 submission the Consumer Advocate outlined the favourable profitability picture for homeowners insurance referred to in Mercer's 2004 report and also depicted in the 2003 loss ratios presented by the Superintendent of Insurance. He submitted that the marketplace has not yielded commensurate benefits to consumers and stated:

> *"As an example, the profits that have been made in the homeowner's insurance sector by insurers are simply beyond that which one would expect in a purely competitive and well functioning marketplace. As will be discussed, consumers have been paying rates which have lead to excessive profits over an extended period of time."*

The Consumer Advocate also observed the survey information made available during the review indicated:

> *"We do have evidence however that the premiums charged in Newfoundland and Labrador were sufficient to produce an average return on equity in this province of nearly 30% in 2004."*

The Board notes that IBC had previously taken strong exception to Mercer's 2004 report which found that homeowners insurance in this Province was very profitable for insurers during the 10-year period from 1993-2002. Following the release of Mercer's report IBC issued a press release in September 2004 urging Government not to place any reliance on its findings, stating that "…. *(the report) is based on erroneous assumptions and reaches incorrect conclusions…*" IBC Vice-President, Atlantic, Mr. Don Forgeron, stated in the release: "*Insurers have experienced a loss of at least 3% on homeowners' insurance over the last five years",* and "*IBC looks forward to highlighting each and every error at public hearings on insurance to be held this fall by the Public Utilities Board."*[19]

[19] IBC, Press Release, September 8, 2004.

In its submission on homeowners insurance IBC again recited what it referred to as *"significant flaws"* in Mercer's 2004 report. Because of this IBC adjusted the data used by Mercer to reflect the use of personal property rather than homeowners, reporting errors by insurers, and a lower ROI and a higher expense ratio.

In reference to the Board's survey results the IBC also suggested that there are limitations on the conclusions that can be drawn from this survey. IBC noted that the weighted average ROE and ROI appear to be flawed. IBC suggested that the Board's survey results were not helpful and may be misleading. Instead IBC recalculated the Board's survey results using an approach similar to that of Mercer. Using Mercer's methodology IBC determined that the Board's survey result of an estimated 7.45% ROE translates into a percent of premium figure of 3.0%. According to IBC these adjusted figures are further proof that insurers are not earning unreasonable or excessive profits from homeowners insurance.

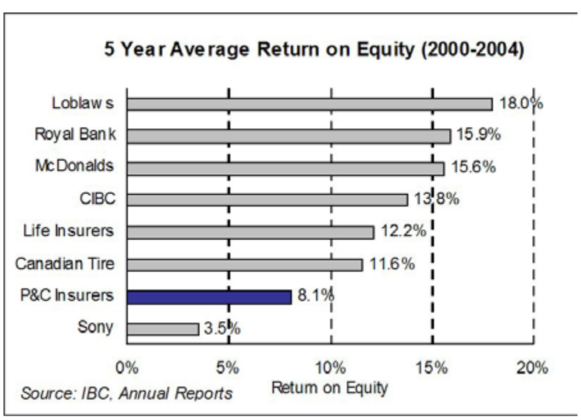
IBC also quoted the Federal Superintendent of Insurance, Mr. Nick Le Pan, who in April 2005 said:

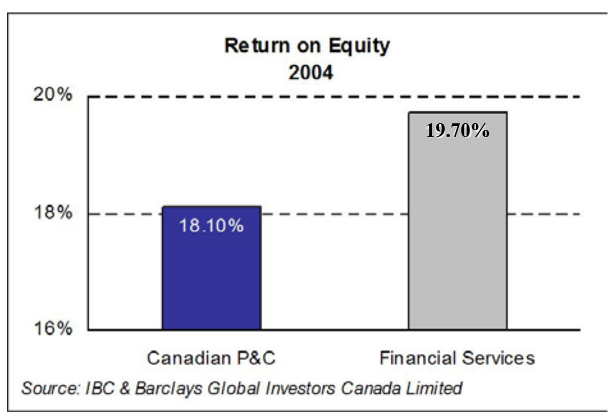
> *"I hope there won't be an over-reaction by policy makers to recent excellent but probably unsustainable profitability in the P&C industry without recognizing that this comes after a number of years of very poor results in what is a highly cyclical industry."*

While acknowledging the strong results for 2004, IBC cautioned that these results came after six years of declining returns between 1997-2002, including two years in which investments in the property and casualty industry returned 2.6% and 1.7% respectively - less than the returns available on risk-free Canada Savings Bonds.

IBC also raised the issue of catastrophic events. IBC defined a year with a significant catastrophe to be one where the loss ratio exceeds 90%. IBC asked that the Board recognize the need for a significant catastrophic contingency in homeowners insurance. IBC did not provide actuarial data in relation to catastrophic losses or any information on how these losses would be managed or rated from a risk perspective.

IBC presented the following exhibits illustrating 5-year average ROE's, comparing the property and casualty industry with selected components of the banking/financial and retail sectors.





Referring to this information IBC stated:

> "*The purpose of these exhibits is to place the aggregate of the insurance industry (i.e., for all Canadian P&C insurers, all line of business) into context over time and relative to other industries over time. In doing so, IBC aims to encourage the PUB to consider the advice of the federal solvency superintendent, to promote a less emotionally charged interpretation of "news" about the earnings of the property and casualty insurance industry and to advocate for constructive, appropriate and formal-looking options."*

In his final submission on homeowners insurance the Consumer Advocate responded:

> "*One would have expected IBC to put forward a far more detailed and substantiated analysis than that offered to the Board. It is simply not credible for IBC to suggest that over the period from 1993 to 2002, insurers actually 'lost money' on the product. The Consumer Advocate would challenge the insurers operating in Newfoundland and Labrador to make this statement under oath and to have the assertion properly tested and verified by opening up their books to independent auditors. Government could also follow the MOW recommendation and insist that an analysis, prepared by a credentialed actuary, be undertaken to determine the true rate level needs of the participating insurers."*

One insurance consumer who provided written comments to the Board in relation to homeowners insurance stated:

> *"Home insurance is one of the products where the companies made a big profit and don't try to hide it because they don't have to, they are not regulated at all."*

The Consumer Advocate noted in his final submission on commercial insurance:

> *"The Board has found that the insurers have not been able to produce the detailed data sought. This limits the ability of the parties to the Review to thoroughly examine profitability and such other issues that may arise from the detailed data."*

Following this observation the Consumer Advocate referred to the 2004 Mercer report which concluded profits on average for both commercial property and liability was somewhat less than reasonable for the 10-year period 1993 to 2002. It was noted, however, individual companies may have experienced very different results. The Consumer Advocate also referred to a graph (1995-2003) presented by the Superintendent of Insurance during the automobile insurance review, which indicated commercial property loss ratios were better than the 83% break even for all years except 1999. This trend, he suggested, reflected quite healthy profits during the period overall. Finally, the Consumer Advocate referred to the Brown Charts which indicated that loss ratios for commercial liability for the Province for 2003 and 2004 were significantly higher than those for commercial property over this same 2-year period.

In its submission on commercial insurance IBC stated:

> "*As part of the PUB review process, the Board has sought to determine the profitability of the Newfoundland and Labrador commercial insurance marketplace. As the Board has learned, a precise figure is not available. Insurers do not allocate their capital or investment earnings to a specific line of business in a specific territory."*

IBC reiterated its concerns regarding the 2004 Mercer report while noting the study found *"commercial liability insurance product has been on average, less than reasonably profitable over the past 10 years*".

3.4.4 Profitability Analysis

The Board acknowledges there is no sound comparative data available nationally or provincially to support a rigorous profitability analysis by each product line. The Board notes this problem is not unique to Newfoundland and Labrador and a similar finding was reached by the NSIRB in its report. Following the NSIRB's analysis of information, some of which was also requested directly from insurers, it concluded[20]:

> *"From several perspectives, the data that is reported to and compiled by the IBC and the data that was reported to the Board by insurers is inadequate for a meaningful analysis of the adequacy of rates in Nova Scotia. This is particularly the case for commercial liability and commercial property. The commercial data available to the Board suggests that overall, the industry's results have not been profitable over the past several years, but the experience appears to vary widely by type of risk. The risk experience as demonstrated by industry data that is the focus of the Board's study does not suggest type of rate increases and market restrictions that have occurred. However, the Board recognizes the lack of statistical credibility in Nova Scotia's data, and, therefore, the need for insurers to consider the experience of other Canadian jurisdictions."*

Despite the data barriers, the Board decided to determine what, if any, conclusions could be reasonably drawn concerning profitability. For the purposes of its profitability analysis the Board considered all relevant studies and other data as well as information gathered as part of this review. The following table provides a summary of this information:

[20] NSIRB Report, pg. 52.

INSURANCE REVIEW HOMEOWNERS AND COMMERCIAL PROFITABILITY INFORMATION		
Source/Study	**Findings**	**Comments**
I. 2003 OSFI Report • Federal regulator of insurance, the Ontario Superintendent of Financial Institution (OSFI). • National study for property and casualty insurance - all lines.	• ROE - 15 year avg 8.1% - 5 year decline with lows of 2% (2001) and 1.4% (2002).	• Newfoundland and Labrador only 1.6**%** (H); 1.1% (CP); and 1.0% (CL) of Canadian market. • Homeowners and auto equals 2/3 property and casualty insurance market and automobile insurance is more than ½ net premiums written.
II. 2004 Mercer Report/IBC Adjusted • Profitability Study of Homeowners, Commercial Property, Liability and Marine Insurance conducted for Government (Newfoundland and Labrador). • Based on information filed with the Superintendent of Insurance.	• 1993-2002 (10 years) Homeowners: 19% exceeds 5% of premium as Mercers standard of profit reasonableness. Very profitable. • IBC Adjusted 2000-2004 (5 years). Homeowners: 0.90% (avg.) of premium ranging from -49.3% in 2001 to 21% in 2004. 4 of 5 years yielding profit. • 1993-2002 (10 years) Commercial Property 63% and Commercial Liability 81% loss ratios compared to loss ratios standard of profit reasonableness of 60% and 78% respectively. Not reasonably profitable. • No IBC Adjusted data re: Commercial.	• Mercer had to make assumptions and set out limitations with respect to the data. • IBC strongly challenges homeowners profitability findings noting significant flaws in Mercer's methodology, including failure to account for catastrophic events. IBC adjusted uses different assumptions indicating a lower ROI and higher expense ratio.
III. Board Survey/IBC Adjusted • Top companies representing approximately 70-80% of provincial market were surveyed using a spreadsheet requesting specific financial data (See Exhibits 2 and 3).	• ROE 2000-2004 (5 years). Personal Property: ROE 7.53% (avg) ranging from -24% in 2001 to 29.5% in 2005. 4 of 5 years some profits. • IBC Adjusted 2000-2004 (5 years). Homeowners: 3.0% (avg) % of premium ranging from -23.0% in 2001 to 19.0% in 2004. 4 of 5 years yielding profit. • ROE 2000-2004 (5 years). Commercial Property & Liability: -10.34% (avg) ranging from -55.37% in 2001 to 24.48% in 2003**.** 2 of 5 years yielding profit. Average liability loss @ -15.53% more than double property loss @ -6.37%. • No IBC Adjusted data re: Commercial.	• The Board expresses caution in the use of these figures due to incomplete and inconsistent reporting of survey information. The commercial data reflects particular credibility problems and was not reviewed by either the Consumer Advocate or IBC. • IBC strongly challenges the findings and methodology with respect to personal property. IBC Adjusted here uses Mercer's 2004 report Methodology. • The Consumer Advocate argues IBC position not credible.
IV. Brown Chart Data • The Brown Chart is an annual statistical report published by a private independent company (Stone & Cox Ltd.) using information available through Provincial Superintendent of Insurance.	• The Consumer Advocate notes Newfoundland and Labrador loss ratios of 47.50% (2003) Brown Chart and 42.12% (2004) Superintendent are lowest in Canada. • Commercial: The Consumer Advocate notes Newfoundland and Labrador loss ratio incurred for CP was 15.09% (2003) and 42.57% (2004); for CL was 120.75% (2003) and 102.09% (2004). The Board observes the CL is the highest in Canada. The Consumer Advocate also notes information from the Superintendent showing loss ratios over the 1995 to 2003 period for commercial property as better than the Mercer standard for all but one year.	• 2003 and 2004 data only.
V. 2004 Nova Scotia Insurance Review Board (NSIRB) Report • NSIRB survey conducted as part of its review process.	• Both homeowners and commercial generally reflect unprofitable results.	• NSIRB indicated inadequate data for meaningful analysis, particularly commercial.

In examining this profitability information, the Board makes the following observations:

- Data Quality Unreliable

  A profit analysis by insurance product line for Newfoundland and Labrador could not be conducted since insurers do not allocate their capital and investment earnings, certain expenses and taxes to a specific line of business in a specific territory. Different definitions, methodologies and timeframes in determining profitability along with different data management and business practices among companies submitting profit data contributed to significant variability in reported profitability results.

  In addition, while most insurance companies participating in the Board's survey were cooperative, unfortunately there was a wide variance in the sensitivity associated with the data supplied. Some of the data originally requested by the Board was unavailable from the companies and much of it was returned with caveats assigned. Consequently the Board directed the companies to make specific assumptions in order to calculate profit. Some companies were still unable to supply the necessary financial information requested in the Board's survey. Mercer was asked to conduct a sensitivity analysis incorporating all companies by assigning a premium to equity ratio of 2:1 for those companies that did not provide the requested information. This analysis showed significant shift in the 5-year ROE for commercial property moving from -6.37% to +14.4% and for commercial liability from -15.53% to -0.04%. Given this range of sensitivity the likelihood of reaching well-founded and accurate conclusions using such data is low.

- No Accepted Profit Standard

  There is no generally accepted standard for profit reasonableness. For example, Mercer's 5% standard for homeowners profitability assumed in its 2004 report was vigorously challenged by IBC which stated that it would roughly be the equivalent of a 9% to 12% ROE. The Board notes OSFI's 2003 Report indicated an 8.1% (avg.) ROE over the entire property and casualty industry over 15 years. IBC's submission also suggests for 2000-2004 (5 years) an ROE figure of 8.1% for P & C insurers in Canada. The 2004 Facts of the General Insurance Industry in Canada points to an historical industry-wide average ROE of 10% but reports generally lower returns in recent years with an approximate 8% return over the 10 years 1994-2003 ranging between 1.7% in 2002 and 13.6% in 1996. In relation to automobile insurance the Board's 2005 Benchmark Order for automobile insurance arrived at a 10% ROE following arguments during the hearing made by various expert witnesses for ROE's ranging from 9% to 16%. While the information shows an historical industry-wide ROE in the 8-10% range, IBC submitted when competing for capital this level of ROE is considerably less than that realized by certain banks and retailers.

- Impact of Business Cycles on Profit

  During a hard market insurance companies may be unable for competitive or other reasons (e.g. regulation) to charge premiums needed to provide for claims payments, operating expenses and a reasonable profit. A soft market, on the other hand, is generally accompanied by an easing of capital problems, reduced loss ratios and an enhanced investment climate, all contributing to improved profitability. As noted in the above exhibit, regardless of the source of information relied upon, industry profitability reflected poor results in 2001 and 2002 at the trough of the hard market. Profits have since rebounded during 2003 progressing to the dramatic improvement experienced by the industry in 2004. The relationship between business cycles and profitability represents a key consideration in determining insurance industry profits.

- No Ready Resolution

The debate over insurance industry profitability has no ready resolution. Profitability in the insurance industry is a complex question influenced by business cycles, the investment market, loss ratios, the competitive environment and a host of other inter-dependent considerations. Specific financial data is not available from the industry to reliably evaluate insurance profitability, and wide variability and sensitivity exists involving the information that is available. In addition, there was no consensus or agreement concerning profitability among the parties participating in this review and methodologies used to date to measure industry profits have received resounding criticism from IBC. Alternatively, IBC was able to provide limited information in the form of other relevant data, documentation, and actuarial or related analysis to assist the Board with a more thorough review of insurance profitability. Even in the context of the automobile insurance review, where there was significantly more information available, the Board had the same experience in determining the profitability of that particular insurance product. The Board also notes the NSIRB's 2004 Report reached a similar conclusion following its attempt to measure the profitability of the insurance industry in Nova Scotia.

3.4.5 Board Comments

The Board experienced numerous difficulties in its review of the financial performance and profitability of the insurance industry. Attempts to drill down into available financial and related data, whether it was previous studies, existing data or requested survey information, was frustrating and at the end of the day produced variable and inconclusive results.

In making its observations, the Board agrees that profitability for insurance companies must be considered in relation to the full insurance cycle, which includes both hard and soft market conditions. It is both unreasonable and unfair in balancing the interests of insurers and their insureds to select one or two years of profits or, for that matter, losses and then endeavour to formulate public policy or other decisions that may present serious consequences for insurance companies. Clearly the industry suffered a significant blow in 2001 and since that time insurance companies, despite a difficult investment climate, have increased premiums and made business adjustments and, much to their credit, appear to have improved their bottom lines. The question for the Board in this review was whether or not profitability for the insurance industry has improved over the ensuing business cycle to allow a fair return to insurers overall. Throughout this review the Consumer Advocate and those representing the interests of the industry have with the exception of commercial liability profitability had opposing views on this key question. Unfortunately due to the multitude of data issues the Board remains unconvinced of either position to the extent of relying on this data to determine the profitability of the insurance industry for each line of business over a full market cycle.

The lack of a definitive finding regarding this question comes as no surprise to the Board following the automobile insurance review and the previous experience of the NSIRB. While noting that regulation similar to automobile insurance is not being proposed for either of these products by any participants in this review, the Board suggests that if Government demands an unequivocal answer to the question of profitability in the insurance industry it will only occur in one of two ways. One option is through a collaborative actuarial study conducted in conjunction with and through the cooperation of the insurance industry and IBC. Alternatively, Government could mandate insurance companies to report the necessary data to the Superintendent of Insurance to enable a complete profitability analysis. The pros and cons of each approach combining profitability information with other potential data requirements arising from this review are outlined for Government's consideration in Section 6.8.

4.0 HOMEOWNERS INSURANCE

4.1 Issues Raised

The Terms of Reference require the Board to:

- *"Report on issues which may be raised surrounding availability and accessibility of this insurance in light of the associated profit margins and identify ways in which these issues may be addressed such as through:*
  - *Rate regulation;*
  - *Alternative means of providing this insurance, including the introduction of risk sharing pools; and*
  - *Underwriting guidelines."*

Many of the issues raised in the homeowners insurance review were brought forward to the Board by the Consumer Advocate based on input from consumers received during his public consultations held in June 2005. Additional issues raised dealt with other hard to place risks, consumer issues such as notice of cancellations, and consumer information including disclosure and transparency of information from insurers regarding homeowners insurance.

A number of written comments were also received by the Board in response to its public notice and request for feedback. Most of these comments concerned issues similar to those raised by the Consumer Advocate.

The Board has identified the following specific issues as being those of major concern with respect to homeowners insurance:

- **Hard to place risks** associated with downtown St. John's, electrical wiring, woodstoves, oil tanks, galvanized plumbing, and student housing.

- **Disclosure and transparency w**ith respect to quotes, policy language, commissions, deductibles, and adequate notice regarding cancellation or non-renewal of policies.

- **Other issues raised** included mandated repairs/renovations, replacement value coverage and the effect of fire protection levels.

A discussion of these issues is outlined below.

4.2 Hard to Place Risks

Hard to place risks are those risks that by their very nature an insurer would be hesitant or unwilling to write. The following risks were identified by IBC as risks for which very few insurers would be willing to provide homeowners coverage:

- vacant properties;
- high claims frequency;
- history of multiple NSF cheques;
- stand alone rental properties;
- stand alone seasonal properties; and
- history of criminal activity (i.e. past history of fraudulent claims).

During the review a number of specific hard to place risks for homeowners insurance were identified which have contributed to availability or affordability concerns for consumers in the past or which may cause problems in the future. These included downtown St. John's, oil tanks, wood stoves, electrical wiring, galvanized plumbing, and student housing.

4.2.1 Downtown St. John's

During his public consultations the Consumer Advocate heard from a number of residents in St. John's who found it extremely difficult to find an insurer who was prepared to insure residential properties in the downtown. Particular concern was expressed about the limited options available to a downtown homeowner faced with an increase in premiums. One gentleman from downtown St. John's wrote to the Consumer Advocate:

> *"In November 2004 the house insurance dramatically escalated from $552.00 to $1,315.60. The municipal appraisal was constant. The insurance brokers advised me that it was almost impossible to obtain insurance for a downtown, partially attached house. They advised that the new rate was the best they could obtain. I personally telephoned two other insurance companies in St. John's. In each call I was immediately asked the location of the residence. Upon responding I was promptly told that the company would not even entertain my request due to location. I therefore was forced to accept the $763 increase."*

This gentleman also advised that he was told in June 2005 that the situation had not altered and that he was further informed by his broker that the decrease of competition in homeowners insurance meant attached downtown dwellings remained extremely difficult to insure.

The Consumer Advocate reported that another resident from Gower Street had advised she had no real choice but to stay with her current insurer despite price increases. The only alternative was to purchase what brokers described as a "substandard", "specialty" or "help" policy at more than double the her prior cost. After calling various brokers and insurers in June 2005 she was given a number of reasons for their declining to insure, primary among themselves the fact that the residence is in the downtown and that the company already has too many policies written for that area.

Another couple from St. John's advised the Consumer Advocate that, despite numerous attempts, they had not been able to obtain insurance at any cost for the past four and a half years on their attached King's Bridge Road property. They attempted to seek assistance through IBAN but were unsuccessful.

The City of St. John's also expressed concern about the difficulty experienced by downtown residents in obtaining affordable insurance. In response to complaints by residents about their reported inability to obtain homeowners insurance, City Council asked its Risk Manager to determine why the situation existed and what could be done about it. In a letter to the Consumer Advocate Mayor Wells outlined the Risk Manager's findings and the position of the City:

> *"The Risk Manager advised that the issue is not the unavailability of insurance but rather the cost of purchasing such insurance for the downtown area. Given the higher premium structure for downtown coverages, many homeowners cannot afford to acquire adequate, if any, coverage leaving them vulnerable to loss and in danger of losing the financing for their homes as banks and mortgage companies require their homes to be insured. Such unaffordable premiums effectively mean insurance is unavailable.*
>
> *While we understand that homeowners who experience difficulties in arranging insurance can avail of the assistance offered by the Insurance Brokers Association of Newfoundland many homeowners are not aware of the existence of such programs and even with such programs may still not be able to afford adequate coverage.*
>
> *Clearly it is in the interest of the City of St. John's that its residents be able to access affordable and comprehensive insurance coverage as the cost of a fire to the community and the economy can be devastating."*

Mayor Wells requested that the Board ensure that all homeowners in the City have access to affordable and comprehensive homeowners insurance coverage in the local market.

The Consumer Advocate also reported that, at the public meeting held by the Consumer Advocate in St. John's, several City Councillors spoke in particular to the stress and upset that older residents in the downtown experienced during the recent hard market over issues such as non-renewals and cancellations, mandated house repairs/renovations and increasing premium costs.

In response to questions from the Board IBAN confirmed that homeowners in the St. John's downtown area have experienced difficulty in finding insurance coverage in the past. The reasons for this difficulty are the high concentrations of wood frame structures with varying type of occupancy and differing physical conditions. With these types of structures there are usually no firewalls/separations in place to allow for reducing risks, resulting in adjacency concerns for insurers. IBAN stated that, while they are not aware of how many consumers have not been able to find insurance in the past two years, they did receive 40 referrals from the Superintendent's office as part of IBAN's voluntary assistance program. This program was put in place by IBAN in consultation with the Superintendent of Insurance to assist homeowners who, after shopping the market, are unable to get insurance on their home. As a result of this program 38 of the 40 risks were able to be accommodated. IBAN acknowledged that the premiums for these risks would have been higher than those in the "standard" market.

IBC advised that the problem of *"hard to place risks is not unique to St. John's and relates mostly to adjacency."* This issue of adjacent housing and the associated higher risk is a concern for other cities across Canada with similar urban cores. An area where there might be a difference relates to the relative number of insurers competing in the Province as compared to other provinces.

4.2.2 Oil Tanks

On April 1, 2002 regulations for the inspection and registration of heating oil tanks in the Province came into effect.[21] The primary focus of these regulations is to prevent heating oil spills and leaks. The regulations were, in part, a response to prevent a reoccurrence of the large number of oil tank and line failures that occurred during and after the record snowfall winter of 2000-2001. The regulations require that all oil tanks in the Province be inspected and registered by a licensed inspector. All new oil tanks installed on or after April 1, 2002 are required to be registered immediately before any heating fuel is supplied to the oil tank. Existing oil tanks installed before April 1, 2002 have to be inspected or registered prior to March 31, 2007. Existing oil tanks altered on or after April 1, 2002 are required to be inspected immediately before fuel can be supplied to the oil tank.

As of April 1, 2007 homeowners will not be permitted to operate or use an unregistered oil tank in the Province under existing legislation. This restriction also applies to companies who will not be permitted to deliver heating oil into an unregistered tank. The regulations also require that an oil tank be replaced after 10 to 50 years, depending on the type of tank. All owners of registered oil tanks will also be responsible for having their tanks inspected every five years to ensure that it continues to meet the regulations.

This issue was raised by the industry as a potential problem in light of the pending March 31, 2007 deadline for registering tanks. Concern was expressed regarding the large number of tanks that require inspection and registration and whether it is indeed possible to complete this process prior to the 2007 deadline. From an insurance perspective it is expected that insurers will not write policies for a tank that has not been registered, which will create availability issues for consumers. Notwithstanding the legislated requirement to have tanks inspected and registered, concern was also raised by both the industry and the Consumer Advocate about the lack of public awareness concerning this requirement and whether there are sufficient resources in place to allow consumers to meet the March 31, 2007 deadline.

The Consumer Advocate also raised the issue of whether the design and construction of tanks actually contributes to the corrosion of oil tanks and increases the possibility of oil spills. Most tanks installed in this Province are end-outlet tanks. According to the Consumer Advocate these types of tanks are susceptible to pitting caused by water settling at the bottom of the tank which can lead to rusting. This pitting is difficult, if not impossible, to detect and may not be discovered until a hole has formed and an oil spill has occurred. In his submission of November 16, 2005 the Consumer Advocate stated that the United States UL 80 steel tank committee switched to bottom outlet tanks in the early 1980s and that all UL 80 steel tanks manufactured from the United States have been bottom-outlet since that time. The question was posed as to

[21] Newfoundland and Labrador Regulation 60/03 *Heating Oil Storage Tank System Regulations, 2003* under the *Environmental Protection Act* (O.C. 2003-227); amended by 103/03. http://www.hoa.gov.nl.ca/hoa/regulations/rc030060.htm.

whether the Province should require bottom-outlet tanks as a means of preventing oil spills in the future.

4.2.3 Other Hard to Place Risks

Wood Stoves

According to IBAN and IBC homeowners with woodstoves as primary heat do present a higher risk and would be considered a "hard to place" risk. Generally if the woodstoves are properly installed and inspected the risk could be accepted but policies could see a surcharge in the range of 75% to 100% over regular market premiums. Homeowners with woodstoves as auxiliary heat, installed professionally and inspected by a certified inspector, would be accepted on the regular market and could see an 8-10% surcharge on their premium.

Electrical Wiring

Some homeowners may experience problems obtaining insurance because of the type of wiring in the house. There are still a number of homes in the Province with the dated "knob and tube" wiring. According to IBC, with a certified electrician's report and possibly some minor modifications, most companies would provide coverage. Some companies may ask to have the knob and tube wiring replaced before providing coverage. IBC also suggested that a greater problem exists with renewals when underwriting rules change. This means that consumers who may have had coverage for a number of years are suddenly faced with the prospect of having to undertake rewiring or electrical upgrading in order to qualify for continued coverage.

IBC also noted that there have been insurance concerns regarding homes with aluminium wiring. There are modifications that can be made to ensure that aluminium wiring is safe but these are expensive and not readily available. Some insurers do not restrict policies in homes with this wiring, other than a requirement that appropriate switches and outlets be used. This risk will be written if a certified electrician's report is provided.

Some insurance companies also have concerns regarding homes with 60-amp service. According to IBC 60-amp service is no longer sufficient to service the typical home with modern appliances. The risk of fire increases whenever the electrical service is overloaded. IBC noted that the Canadian Electrical Code will only permit 60-amp service for a home less than 861 square feet. Larger homes require at least 100-amp service.

In response to an inquiry from the Board concerning loss statistics for this specific risk, IBC advised while no specific loss statistics are kept it is well accepted and known in the industry that overloading of electrical service increases the risk of fire. With this information, and acknowledging that the 60-amp service does not comply with current electrical code requirements for a typical home, IBC stated that it is prudent risk management for insurers to avoid this risk. This issue leads to a lack of available insurance if companies are not willing to write the risk.

Galvanized Plumbing

IBC advised that there is a high level of risk associated with galvanized plumbing because these pipes may appear to be in good condition on the surface, yet have severe internal corrosion. The level of risk is dependent on the use of the pipes. If the pipes are used only as waste lines there may be less of a problem since these pipes are not pressurized and are seldom the cause of severe water damage. IBC stated that insurers will generally give existing policyholders time to replace their plumbing before discontinuing coverage. However, new clients with galvanized plumbing in their homes may have difficulty obtaining coverage. Galvanized plumbing may present a particular problem for consumers when purchasing an existing house.

Student Housing

Homes used for student housing can have either commercial property or homeowners insurance. IBC advised that basic coverage under a homeowners policy is available for this risk in the non-standard market. However policies may not be renewed if the home was originally reported as a family dwelling and was subsequently converted to a student house.

4.3 Disclosure and Transparency

4.3.1 Disclosure of Quotes Obtained

The Consumer Advocate submitted that at present a consumer does not know how many quotes their broker has sought on their behalf. While consumers may believe that their broker has checked with a variety of insurers to obtain the best price and terms, many brokers only represent a small number of insurers and therefore may be very limited in their inquiries. The Consumer Advocate stated that the consumer should be advised of all quotes sought and received so that the consumer can make an informed judgement as to whether he or she is content with the number of possibilities explored.

With respect to this issue IBC stated in its final submission:

> *"There are differences in the products offered by different insurers. It is the role of brokers to provide information to the consumer, as necessary to the consumer, regarding the quotes sought and received. There is no reason to believe that consumers either desire or require that in each instance the broker provide an itemized list for each quotation. It is not believed that it would be cost effective to impose a formal requirement upon a broker that each and every quote be itemized and provided by the broker to the consumer."*

4.3.2 Disclosure of Commissions

It was the Consumer Advocate's position that consumers should also be made aware of the compensation arrangements of insurers with their agents and brokers. Some brokers and agents may not be truly independent of the insurers whose products they are selling by reasons of association relating to ownership, financing or other circumstances. The Consumer Advocate stated that the independence of the broker is crucial to the consumer's assurance that his or her interests take priority over the broker's interests and are not being sacrificed to the interests of others.

The Consumer Advocate raised the issue of whether consumers should have the right to know exactly what they are paying in terms of commissions. In written submissions he referenced the document "Principles and Practices for the Sale of Products and Services by Property and Casualty Insurance Brokers", issued by the Insurance Brokers Association of Canada (IBAC) which explicitly states at para. 7(b) that:

> *"<u>P & C Broker/Business Relationship Information:</u>*
> *Upon request of a client and wherever relevant to the transaction, the P & C broker must disclose all fees payable by the client, the method of the P & C broker's <u>remuneration (disclosure of specific amounts is not required, but disclosure of the type of compensation is i.e., fixed and percentage commission, salary or other)</u> and must disclose the existence of any other benefits from sales incentive programs related to the transaction <u>(note: as with compensation, this disclosure only applies to the type of compensation the P & C broker receives, not the specific amount</u>)". (emphasis added)*

This provision does not require that consumers be told the specific amount of the commission but only applies to the types of compensation the broker receives. The Consumer Advocate suggested that disclosure of commissions should be a line item on all invoices and renewal notices and should be disclosed when quotes are provided over the phone.

According to IBAN commission rates in this Province are in the same range as for other provinces. IBAN reports that the industry norm is approximately 20%. IBAN does not feel that brokers should be obliged to disclose the type and amount of commission being charged to the consumer when giving quotes. If a client specifically requests the information it should be made available. It was also noted that this information is currently available on various insurers' websites.

According to IBC the issue of disclosure of broker commissions is currently under review by the Canadian Council of Insurance Regulators (CCIR). IBC's position was that this review process should be allowed to continue and that the Board's analysis of this issue be reserved until that process has been completed.

The Consumer Advocate also questioned whether contingent commissions are in the consumers' interest. He referenced a January 2005 agreement reached between the Attorney General of New York and Marsh & McLennon Companies, which expressly prohibits contingent compensation. According to the Consumer Advocate contingent commissions may result in the steering of a client's insurance business to favoured insurance companies. He suggested that, in the absence of some compelling reason to the contrary, these types of arrangements should be prohibited in Newfoundland and Labrador.

According to IBAN contingent commissions are a "non-factor" in the placement of individual risks. Contingent commissions are usually linked to positive underwriting results and are typically tied to the broker's performance over a three-year to five-year period. Contingent commissions are not based on individual risks but usually on a broker's overall portfolio. These commissions are also not typically based on specific lines of business such as homeowners insurance. IBAN stated that these commissions *"should not be prohibited as performance linked benefits are found in most industries and seen as an essential part of the competitive business marketplace."*

4.3.3 Plain Language

The policy forms presently in use for homeowners insurance in the Province may vary widely, depending on the policy form (Standard vs. Broad vs. Comprehensive) or whether the policy contains additional coverage. While acknowledging that the contractual nature of the insurance policy documents requires certain language the Consumer Advocate suggested that plain language information would ensure that consumers understand what coverage they have and don't have.

IBC stated that most, if not all, insurers have attempted to use plain language in their insurance policies to the extent possible, recognizing that the policy is a legal contract. Significant limitations are also generally set out. This is the case in this Province and in other Canadian provinces. Many insurers use the standard language as proposed by IBC, modified as necessary to reflect variations in the insurers' products. The extent that consumers are not aware of the contents of their homeowner's policy (if indeed this is the problem) is not, in the opinion of IBC, due to the lack of plain language but rather due to the failure of the consumer to read the policy. Consumers should be encouraged to read and become familiar with their policy. IBC recognized that it would have a role to play in consumer education.

IBAN does not feel that a standard policy should be mandated by Government. Insurers tend to add coverage to their policies for competitive reasons. With a standardized policy form IBAN suggested that consumers may lose some of these additional coverages.

The Consumer Advocate provided the following comments in his final submission:

> *"While it is recognized that the coverage terms of a policy can be technical, subject to judicial interpretation and fact-dependent, it should be possible to state in plain language what the policy is generally meant or not meant to cover particularly as regards events such as oil spills or leaks, flooding, sewer back-up and frozen pipes. Brokers and insurers may be able to add further examples of key terms. For example, in the case of oil spills or leaks, it should be stated clearly whether the policy is designed to pay for all clean up costs of one's property or whether the coverage is limited to a certain dollar amount or percentage or whether the insurer's obligation to pay for one's clean up is dependant on whether the spill or leak threatens to migrate to other neighbours. It should also be clearly stated whether the policy is designed to cover the clean up costs of spills or leaks that occurred prior to one's ownership of the property but which were not discovered until after the purchase."*

4.3.4 Impact of Deductibles

The Consumer Advocate reported that, based on discussions with homeowners, it is apparent that some homeowners are quite reluctant to make small claims on their insurance policies for fear of increased premiums or possible loss of insurance coverage. According to the Consumer Advocate this means that these consumers are effectively self-insuring at least for losses up to certain deductible amounts depending on their own financial circumstances. Given that the amount of the deductible impacts directly on the premium, the Consumer Advocate stated that consumers would benefit from notification at point of sale and on renewal notices as to the range of deductibles they may choose and the effect on their premium. In his final submission the Consumer Advocate provided the following comments:

> *"I do not believe that at present consumers are in fact being advised of the full range of deductible options and the premium differences. It makes little sense to choose a 500 or 1,000 deductible when one would typically self-insure to that level and beyond anyway for fear of submitting a claim that may lead to premium increase or loss of coverage at some future point. As a result consumers are effectively being denied the opportunity to save considerable sums on their homeowner's insurance premiums and are literally wasting their money in some cases. This is not appropriate and, in my view will only be ameliorated through mandatory disclosure measures."*

Information provided by insurers showed that, for a home in a protected area, the difference in premium in moving from a $500 deductible to a $1,000 deductible can range from 10% to 15%. By choosing a deductible of $2,500 the savings increase to 20% to 30%, depending on the insurer. These savings do not include the tax effects and any applicable discounts or surcharge, so the actual dollar savings would be higher.

The Consumer Advocate stated that brokers and insurers should be required to provide the consumer with specific information regarding the impact of the choice of deductible level on the premium charged. It is not sufficient for consumers to be given this information only upon asking. Consumers have a right to know this information and the only way to ensure this right is protected, according to the Consumer Advocate, is to make the disclosure of this information mandatory. Consumers will then be able to make an informed choice as to what deductible works best for them.

4.3.5 Adequate Notice to Insureds

At present notice of cancellation of a policy must be by registered mail at least 15 days before cancellation or 5 days if personally served. In his written submission the Consumer Advocate raised the issue of whether and to what extent notice periods should be expanded for not only cancellation but also non-renewal and significant changes in rate and coverage.

During public sessions Councillors from the City of St. John's told the Consumer Advocate how some older residents were sometimes stressed and upset when confronted with notification that, after many years of coverage with the same insurer, their policies were being cancelled or not renewed. It was suggested to the Consumer Advocate that an insurer's ability to "cut loose" an insured should be limited and that insurers should only be able to refuse to continue to insure for certain prescribed and objectively valid reasons otherwise they should be compelled by law to provide lengthy advance notice. As examples, it was suggested that after 5 years coverage, 2 years notice would be required, and after 15 years of coverage, 3 years notice would have to be provided.

4.4 Other Issues

4.4.1 Mandated Repairs and Renovations

Some consumers expressed their frustration with an insurer's determination that a certain costly repair or renovation is required as a condition of maintaining one's insurance coverage. This is sometimes required even when the consumer's own contractor has stated that such a costly repair is unnecessary or that the problem, if one exists, can be corrected by taking much less intensive measures. For example, one insured reported to the Consumer Advocate that he was told that he had to re-shingle his roof or insurance would not be renewed. The job was quite costly for the insured and the insurer required this repair despite the insured's professional roofer's opinion that the work was not necessary. The insured stated that he was unsuccessful in trying to arrange alternative insurance and that he felt that the insurer's decision was basically unchallengeable. The Consumer Advocate submitted that this issue can be one of accessibility because, unless the repairs or improvements are made, the insured will lose his or her coverage and may not be able to find another insurer.

The Board asked both IBC and IBAN a series of questions regarding standards adhered to by insurers in determining that a repair or renovation is necessary in order to obtain or maintain coverage, such as notice, timing, or offering alternative options to the insured. The issue of whether independent inspectors are used to provide recommendations on improvements or upgrades was also raised with industry.

IBC advised that insurers have different guidelines and practices with regard to the use of inspectors. In-house inspectors or independent inspectors from a variety of agencies may be used. IBC also stated:

> *"While insurers make use of inspections for risk management, they also consider it a value-added service for their customers. The insurers who offer the service of an inspection to their customers generally do so at no cost to the customer. Customers do not consider such inspections unnecessary or unwarranted. While it is in part a matter of risk management for insurers, customers reasonably would view this as a value-added service for them, especially when the point of the inspection is to take steps which could avoid not just the loss of property, but the loss of life."*

IBAN advised that the determination of whether an inspection of a property is required is usually made by the insurer; although brokers may request an inspection if the need justified. Inspections are carried out by in-house inspectors or third party outside sources. IBAN was not aware of any standards for training or certification of inspectors but felt that most inspectors are well-educated and competent professionals. IBAN does support education and training and stated that consistent uniform standards would probably be beneficial to consumers. However IBAN expressed the opinion that, in their view, insurers provide sufficient notice to clients detailing any outstanding issues and that most insurers are willing to work with their clients toward a reasonable solution.

One insurer reported that it has a safety department that provides a no-cost inspection whereby the insurer can assess the risks and the insured learns about these same risks. In undertaking these inspections the company is using its past experience and risk management techniques to identify potential problems.

Another insurer described a similar process where third party inspectors are used to identify priority items to be remediated. Inspectors also provide safety tips to the homeowner and a timeline is generally established to have the mandated work completed. The insurer was not aware of any industry standards in relation to this process and concurred that none were warranted.

4.4.2 Replacement Value Coverage

Several insureds reported concerns to the Consumer Advocate about having their premiums increased on the basis of escalating replacement values. One insured reported owning a home in a small town with a maximum market value of $50,000 yet the insurance company insisted on basing the premium on its replacement value of $169,000. Another insured from St. John's wrote to the Consumer Advocate questioning why his house must be insured for the cost of rebuilding with new materials at today's cost, even though records show that only 1% of houses involved in a fire burn to the ground. It was this insured's opinion that the insurance companies are factoring the cost of the foundation and the land in the total house insurance coverage.

During his public sessions, the Consumer Advocate received a variety of questions concerning replacement value coverage. These are outlined as follows:

1) What choices are available for consumers who may not desire replacement value coverage?
2) What are the cost differences between replacement value coverage and other alternatives that may exist?
3) On what basis are replacement values established by insurers in placing and reviewing policies?
4) What is the current approximate percentage of consumers who now choose a coverage other than replacement cost coverage?
5) To what extent do brokers currently suggest that a consumer may wish to consider coverage other than replacement cost coverage?
6) Do brokers feel comfortable suggesting that a consumer may wish to consider coverage other than replacement coverage in light of the potential for disputes in the event of a loss?
7) What is the best means of providing information to consumers about alternatives to replacement cost coverage so that they may exercise an educated choice?

4.4.3 Effect of Fire Protection Levels

The level of fire protection offered in an area affects the premiums a homeowner may be charged. Appropriate rates are applied to the various grades of fire protection available, reflecting the level of risk present:

- Unprotected – over 13km from a fire department.
- Semi-protected – no hydrants, Volunteer Fire Department only.
- Protected – fire hydrants, full-time fire department.

While coverage is available for unprotected areas, the premiums are higher to reflect the increased risk. According to IBC this issue is not one of availability but it could result in one of affordability for the consumer as rates will reflect the risk associated with a lack of fire protection.

4.5 Board Comments

Most of the issues raised by consumers in relation to homeowners insurance related to accessibility to coverage for hard to place risks, in particular for downtown St. John's. This problem was compounded in downtown St. John's because of the lack of choice for consumers when shopping for insurance. Because of risk exposure concerns, primarily as result of adjacency issues, many insurers stopped writing policies in downtown St. John's, leaving only a few insurers in the market. This lack of choice resulted in consumers having to accept the higher premiums quoted or be faced with the option of no insurance coverage. In some cases consumers were unable to find any coverage.

With the exception of the specific issues raised in relation to higher premiums for downtown St. John's the Board received no other comments related to affordability issues for homeowners insurance. Information provided by IBC and requested by the Board directly from insurers confirmed that average homeowners insurance premium levels in this Province are comparable, and in fact slightly lower, than those in the other Atlantic provinces. The premium levels also do not appear to have been subjected to the significant premium increases experienced for commercial insurance, which may be in part the reason why the Board did not receive the same level of commentary on homeowners insurance premiums as it did with respect to the other insurances reviewed.

The issue of oil tanks and the pending registration deadline of March 31, 2007 was raised by insurers as a potential accessibility issue. If homeowners do not have their tanks registered by that date insurers may not provide coverage. Additional consumer education may be required to ensure that they are aware of this requirement and of the possible impact of non-compliance.

Several additional issues were identified by the Consumer Advocate relating to the disclosure and transparency of certain insurance information to homeowners, including the impact of deductibles, commissions paid to brokers, disclosure of quotes obtained, and the need for plain language documents. Many of these issues are a function of the consumers' relationship and interaction with their broker or agent. The brokers who participated in the review agreed that consumers should be provided with all necessary information to enable them to make informed decisions as to their insurance purchase, but suggested that this was happening now. The issue of rights with respect to notice for termination, non-renewal and premium increases was also raised. The Consumer Advocate argued strongly that rights of a homeowner to this information should be enshrined in a "Bill of Rights" and should not be left to chance, depending on the broker or agent involved.

In Section 6.2 of this report the Board has brought forward the Consumer Advocate's proposal for a Homeowners Insurance Bill of Rights as part of a broader discussion of Consumer Protection mechanisms that may be considered for all insurance products. Other specific solutions for homeowners insurance that may address the accessibility issues raised during this review are discussed in Section 6.5.

5.0 COMMERCIAL INSURANCE

5.1. Issues Raised

The Terms of Reference require the Board to:

- *"Report on issues which may be raised surrounding availability and accessibility of this insurance in light of the associated profit margins, particularly with reference to the hospitality/tourism industry, as well as, not-for-profit organizations, volunteer organizations and other individuals involved in volunteer activities. Identify ways in which these issues may be addressed such as through:*
  - *Rate regulation;*
  - *Alternative means of providing this insurance including the introduction of risk sharing pools, caps or deductibles; and*
  - *Grouping or classification of commercial consumers in setting rates."*

The Board received several submissions and presentations outlining concerns and issues related to the business and voluntary sector. The majority of these submissions addressed the impact of increasing commercial insurance premiums, and the resulting challenges these higher costs presented to small businesses, and in particular the hospitality and tourism industry. The voluntary sector, primarily through the Community Services Council, also raised several concerns about the costs of insurance and provided the Board with useful research and documentation and raised numerous issues relating to insurance and the impact that high insurance costs and the liability of volunteers was having on the ability of the sector to deliver services in the community.

The following issues have been identified by the Board as being of major concern with respect to commercial insurance.

- **Costs and availability of commercial insurance** and the negative impact on businesses and the voluntary sector of significant premium increases and other aspects such as inadequate notice for policy changes.

- **Perceived disconnect between claims and increased premiums,** particularly for those groups and sectors with limited or no claims. The issue also included questions about whether premiums reflect actual risks and how programs that are put in place to reduce risks are recognized by the industry in premium setting.

- **Lack of insurance knowledge and information**, including access to basic information on commercial insurance by consumers, and also concerns about the level of knowledge of insurers about the activities and risk levels of their commercial insureds.

These issues are detailed further in the following section.

5.2 Costs and Availability of Commercial Insurance

5.2.1 Business Sector

The business community in the Province expressed concerns over the issues faced regarding the limited affordability and accessibility of commercial insurance coverage. Several organizations outlined the challenges experienced by their members in obtaining adequate insurance and the impact on their business operations and on the provincial economy in general:

- According to the St. John's Board of Trade small and medium sized enterprises are particularly vulnerable to issues of affordability and accessibility of commercial insurance. Many firms have seen their premiums increase year over year (marginally in some cases and dramatically in others), and some companies have simply not been able to obtain adequate insurance at all. While businesses in "high-risk" categories are experiencing the most severe problems (restaurants, bars, tour companies), businesses in other sectors are also facing problems.
- The Gander Area Chamber of Commerce stated that the ever increasing costs of property and liability insurance results in short-term and long-term effects within rural areas of the Province.
- A member's opinion survey carried out nationally by the Canadian Federation of Independent Businesses from July to December of 2004 revealed that 72% of respondents from this Province viewed insurance premiums as having a significant impact on their business.
- Hospitality Newfoundland and Labrador stated that insurance has been a major issue for their members and, in particular, the high cost and lack of availability of commercial insurance for the tourism business. Two sectors of the industry that have been hardest hit are the lounge and beverage industry, which has seen astronomical rate increases, and the adventure tourism or outdoor tourism operators.

In a written submission to the Board the St. John's Board of Trade provided the following comments on the impact of insurance issues on businesses in the Province:

> *"…there are real concerns that some businesses cannot obtain adequate coverage because they are deemed to be unprofitable risks. That often means they have to alter their activities, cut back, lay off employees, or shut their doors in extreme cases. There are also concerns that businesses will choose to operate while uninsured, either because they cannot obtain coverage or because they simply cannot afford it. These businesses are obviously very vulnerable to a claim being filed against them, in which case they are responsible for paying their losses themselves.*
>
> *Even in the absence of a claim, not having insurance poses problems for businesses. For example, it is not likely that an uninsured business would be able to obtain financing from lending institutions to help maintain and grow the operation."*

Many businesses and municipalities provided specific examples of increasing insurance costs and the impacts on their operations:

- A small welding operation with 10 employees and no claims saw its commercial insurance premiums increase from $25,000 to $108,000 over a one-year period.
- An owner of a transport and warehousing company in Gander advised the Consumer Advocate that its (non-auto) commercial premium went from $18,000 in 2001 to $43,000 in 2004 and 2005.
- The Town of Gander's annual commercial insurance premiums increased over the past three years from $105,000 to $195,000.
- The City of Corner Brook reported increased premiums of approximately $173,000 or 55% since 2003. There have been no layoffs but, with less funding to provide the same level of service, city services are slowly being eroded. Tax increases may need to be considered.
- In response to a survey by the Newfoundland and Labrador Chamber of Commerce a number of small manufacturing and fabrication shops reported increases in premiums of between 25% to 36% since 2002. According to these businesses insurance costs are having a very negative impact on industry growth and sustainability.
- In response to a survey undertaken by the Gander & Area Chamber of Commerce a seasonal inn in central Newfoundland and Labrador reported increases in premiums of $3,000 to $4,000 over the past three years and stated that, as a seasonal business it was difficult surviving the past year. Staff layoffs have occurred due to drastic increases in insurance premiums.
- A response to a survey by the Clarenville Area Chamber of Commerce stated that in the past three years "*costs for liability and tenants insurance have more than tripled. All blamed on Sept. 11 and other factors that are not applicable to this market.*" According to this Chamber member some businesses have had to reduce coverage to keep costs in line.

The following comments from members of the St. John's Board of Trade as set out in its submission to the Board are also instructive as to the impact of increasing insurance premiums on businesses during the recent hard market:

> *"My business insurance increased in 2002 by 23% and we anticipate a 27% increase in 2003. This represents an additional $25,000 for my business. I have had to significantly increase my deductibles by 150% to allow me to manage the skyrocketing prices…"*

> *"We are a commercial real estate company which owns and manages a number of properties in St. John's. Our experience during the past insurance renewal period has been one of dismay and extreme frustration. One month before renewal of our insurance policies we were informed by our provider that they were not prepared to renew our policies. No explanation was given. Our claims history consisted of one claim in six years. This left us very little time to secure alternate insurance. Ultimately, we were forced to pay excessive premiums (e.g. increases ranging from 270% to 570% between 2002 and 2003)."*

"The recent increases in insurance rates have had a profound affect on our cost of doing business. Specifically, we have experienced a 55% increase in premiums from 2001-02 and another 30% increase from 2002-03. These represent a cumulative increase of 101.5% from 2001-03. This is very significant and will involve a certain amount of absorption internally, with the remainder being passed on to our customers."

"Our company has experienced huge increases in premiums in the last 2 renewals. In 2001-02 we experienced an increase of 244% and for 2002-03, an increase of 114%. Profit margins, on the other hand, have not increased to cover these increases. Some types of coverage is very difficult to obtain, at any price. Also, the deductible had doubled. Our company would like to see 1) a levelling off of insurance prices, 2) overall reduction in premiums, and 3) reduction in deductibles."

"Since Sept. 11 insurance on all of our commercial properties in Atlantic Canada has doubled. Insurance companies are using the crisis as an excuse to recover their losses from all ratepayers. No insurance company to date has been able to convince me that the insurance risk profile of an office building in St. John's has increased one iota since 9/11. It is all just a big rip off that seemingly we can do nothing about."

The issue of lack of notice for changes in premiums or coverage and non-renewal or cancellation of a policy was also by the business sector. The Canadian Federation of Independent Businesses reported to the Consumer Advocate that a national survey in May 2002 showed that only 51% of business owners were notified in writing 30 days in advance of any changes made by their insurer to a policy and that 27% were not notified at all. In some cases, the policy was cancelled with little warning or reasons.

The hospitality sector, which includes restaurants and lounges, has also experienced significant premium increases over the past three years, as is evident from the following submissions:

- Members of the Beverage Industry Association of Newfoundland and Labrador report increases to their commercial policies from 40-150% over a three-year period. For example one member's Host Liquor Liability premiums increased from $11,000 per year in 2002 to $18,000 in 2003 to $20,000 in 2004 to $28,000 in 2005, without any claims and no material change to the establishment.
- The Beverage Industry Association reported that because the Commercial General Liability Package has a liquor exclusion members have to purchase a Host Liquor Liability Package. According to the Beverage Industry Association only two underwriters in Newfoundland and Labrador offer this particular coverage. This results in little competition and unreasonable costs e.g. a relatively small pub without a dance floor, bouncers or cover charge can expect to pay between $5,000 and $8,000 per year for this coverage. Some larger operators pay that amount per month.
- Hospitality Newfoundland and Labrador reported that that some operators in this sector have seen their rates go from as little as $1,500 per year to as much as $6,000-$7,000 per year in a four-year period. Some operators have been unable to get coverage at all or have had their coverage cancelled.

The tourism sector also expressed particular concerns about the impact of increasing insurance premiums:

- Hospitality Newfoundland and Labrador reports that some operators in the tourism sector have experienced increases year over year in the 40-500% range for commercial liability, even though they are claims free.
- Several tourism operators are finding it difficult to pay for their annual insurance premiums given the fact that revenue is generated in part of the year only.
- The owner of a family adventure park in Corner Brook reported to the Consumer Advocate that the liability insurance premium for his snow tubing operation increased from $7,000 in 2002 to $22,000 in 2003 and to $55,000 in 2004 despite having no claims and the implementation of risk management strategies. Faced with these increases the owner ceased operation.

In a presentation to the Board Mr. Stan Cook of Hospitality Newfoundland and Labrador outlined the impact of high insurance premiums and the lack of availability of insurance on the tourism sector in the Province:

> *"This issue has the potential to damage a large number of tourism businesses and has done a fair bit of damage to them. A lot of our membership comes from rural parts of the province and the high premiums and lack of availability has really forced a lot of businesses to operate without adequate insurance and has, in some cases, put businesses out of commission…the insurance rates for tourism operators have skyrocketed in the last few years and we've had a bunch of policies cancelled."*

5.2.2 Voluntary Sector

According to the Community Services Council there are 2200 registered, incorporated non-profit groups in Newfoundland and Labrador, with about half of these groups having at least one employee. Almost half operate exclusively with volunteers and many volunteers are associated with multiple organizations. It is estimated that there are approximately 138,000 active volunteers and about 29,000 employees associated with the non-profit voluntary sector throughout the Province.[22]

In its submission to the Board the Community Services Council indicated that non-profit voluntary organizations are primarily concerned about legal liability and the cost of insuring against lawsuits arising from people in positions of responsibility being held liable for actions associated with the organization. Volunteers and staff of non-profit voluntary organizations are also becoming more aware of the risks they assume while carrying out their activities. This increased concern on the part of Board members, staff and volunteers with respect to legal liabilities and the need for insurance to protect the volunteers and the organization in the event of a legal action is presenting many challenges for this sector.

[22] Atlantic Task Force Report, November 2005, pg. 7.

Increasing insurance costs are also having a significant impact on the ability of the voluntary sector to deliver programs and services. In 2004 the Community Services Council conducted a survey of 106 voluntary organizations in the Province to gather information related to concerns about availability and affordability of insurance for voluntary organizations.[23] This survey found:

- 36% of respondents operate with no insurance coverage. These uninsured operations are mainly smaller organizations, most having head offices outside the Avalon region, most have no paid staff, and 50% have annual revenues less than $30,000.
- Most of the 64% of organizations reporting having at least one type of insurance coverage were predominantly larger, incorporated groups, mainly categorized as faith-based or sporting/recreational groups with head offices located in the Northeast Avalon.
- 44% of the insured operations reported that their organization had been told to expect increased premiums, ranging from 15% to 600%.
- 10% of the insured operations reported they had experienced difficulty renewing their insurance policies, for reasons of "exorbitant" costs, lack of carriers willing to insure, or because of the risk associated with their activities.
- Nearly 33% of all survey respondents suggested that future changes in the cost of insurance would affect programs in some way. Increased premium costs will have to be covered by funds from programming budgets, through fundraising, or by increasing fees. Some organizations reported that the need for insurance along with its rising cost may actually shut down their organizations.

The main reasons reported for not purchasing insurance were:

- Too costly (40%)
- Do not know what coverage to look for (20%)
- Do not need insurance coverage (20%)
- Cannot find a broker with appropriate coverage (6%)

According to the Community Services Council survey the greatest perceived risk reported by voluntary organizations is the possibility of a lawsuit, with over 50% of the respondents reporting that bodily injury is a major risk factor faced by the Board, staff and volunteers working within their organization. Only 14% of the survey respondents indicated their organization had a comprehensive risk management program, and 41% of all respondents indicated that their organization had no plan, policies, or program to reduce risk.

The Community Services Council provided examples of premium increases experienced by several voluntary organizations in the Province in the last number of years. These were supplied in response to a 2006 survey on insurance issues by the Community Services Council:

[23] Community Services Council, Insuring Sector Survival: Insurance and the Voluntary Sector, Community based Sector in Newfoundland and Labrador, 2005.

> *"This is a registered charity summer camp for special needs individuals of our province. In the last three years the total costs of insurance has gone from approximately $12,000/year to $34,000/year."*

> *"Our premiums for Directors insurance increased from $1,600 four years ago to $2,600 this year (2006)."*

> *"In 1995 we were paying $4-5,000 for liability insurance for approximately 5500 members. Today for the same coverage we pay $34,500."*

> *"We were paying $3,200 for our buildings. That increased to $8,900 the year before last so we had to cancel everything."*

> *"Our insurance cost doubled last year but we shopped around and found an insurance company a bit cheaper, but still too high for us. Don't know how long we can keep it up."*

The following quotes from the same 2006 survey indicate that concerns about insurance costs and liability are still significant issues for this sector in the Province:

> "*I feel* [insurance] *is a an unnecessary cost placed on volunteer groups who just cannot afford it. This is causing volunteers to be overly cautious or not volunteer at all. Community groups face so many challenges with out-migration and limited monies and now with the liability issue and cost people are just not volunteering."*

> *"Volunteers are usually the same people over and over again. It is difficult enough to get volunteers. Now that insurance issues have arisen it is even more difficult. As times it is preventing delivery of services and making it increasingly stressful on administration to do their job."*

> *"There should be more awareness to volunteers about legal liability, to protect them – however this will hurt the "system" as a whole, because the more they learn the more inclined they will be NOT to volunteer unless there is insurance in place – could lead to serious problems particularly in rural areas."*

> *"The regional garbage committee resigned due to liability concerns. Many people in our area will no longer volunteer, once they realized they can be sued personally for volunteer work that they do. The numbers of volunteers is dwindling rapidly, it is just not worth it…"*

> *"We have been able to keep insurance on* [heritage property] *to date but if we cannot raise more funds over the 2006 season it will be impossible next year. We are in the dilemma of choosing between heat to protect the artefacts and insurance to protect the whole property."*

Other examples of affordability issues and significant premium increases in the voluntary sector were also provided to the Board:

- the Newfoundland and Labrador Command of the Royal Canadian Legion reported that its insurance costs increased from $82,182 in 2001 to $108,874 in 2002 to $165,101 in 2003. Premium increases at the branch level have also been substantial with premium increases for 2003 reported to be 200-250% higher than 2004.
- A resident of Belleoram reported to the Consumer Advocate that the premium for the local church increased from $400 to $2,800 in 2004 alone.

- The Association of Heritage Industries reported that few heritage groups in the Province have Directors and Officers' liability insurance to protect volunteer members or are able to insure their artefact collections. Those that are able to obtain insurance often find the premiums excessive (up to $2,000) for what is a low risk sector according to the Association. If all community run heritage organizations were to purchase Directors' and Officers' liability insurance alone the Association suggested this could cost $1 million annually.
- The Newfoundland and Labrador Snowmobile Federation had to suspend operations in 2004 as insurance rates for groomers jumped from $44,000 to $205,000. This had a direct impact on 20 seasonal jobs.[24]

The Board also received a comment letter from the Pottle Centre in St. John's, a social centre for consumers of mental health services in the Province. The premiums for general liability coverage for the Pottle Centre increased from $690 in 2001 to $2,875 in 2004 and have remained stable since then. Over this six-year period the Centre reports that there have been no claims, no changes in the policy, and no changes to operations. There have also been no companies other than the current insurer willing to provide coverage. The Centre operates primarily on funding from the provincial Government and indicated it was fortunate that its annual funding was increased to offset this additional cost.

One area that was identified as a major issue for the voluntary sector was uncertainty surrounding whether transportation of people by volunteers in their own vehicles is covered or whether "business insurance" is required. According to the Community Services Council this issue is impacting programs because volunteers are reluctant to use their vehicles for fear of their own personal insurance being affected in the event of an accident. One school board reported to the Community Services Council that *"…not only are some people reluctant to transport others, our school board's policy indicates that people transporting students must have specific coverage, i.e. a certain amount of liability. This prevents some parents, who are willing to help out with transportation issues, from being involved."*

Rising insurance costs are becoming a larger part of the already limited operational budgets of many of the organizations represented in this sector. The impact of these increased insurance costs on the voluntary sector are significant and include:

- Discouraging groups from purchasing needed insurance coverage in the first place;
- Reducing necessary insurance coverages to offset increased premiums;
- Diversion of program funding to pay insurance costs, hence impacting the ability of the organizations to offer programs;
- Increased fundraising necessary to raise money to pay higher premium costs;
- In cases where insurance is necessary for programming but where the costs are prohibitive, the viability of the program or organization is threatened; and
- Concerns with insurance coverage and potential liabilities affecting recruitment of volunteers, especially for Board positions.

[24] The Telegram, January 2, 2004.

5.3 Perceived Disconnect Between Claims and Increased Premiums

Several presenters also raised questions regarding the increased commercial insurance premiums and the apparent lack of claims. For example, according to the Beverage Industry Association the majority of members report no claims under the Host Liquor Liability coverage. In most cases instead of making an insurance claim the establishment covered the losses. However commercial liability premiums have still increased substantially. It was suggested that claims experience in other parts of the country are causing unjustified increases in this Province.

The St. John's Board of Trade expressed the opinion that the increasing degree of litigation is in part driving the current trend towards higher insurance costs in the Province. There is a common perception in the business sector that there are a growing number of frivolous and fraudulent claims being filed and settled with "quick and easy" compensation. These costs to settle claims result in higher insurance costs for everyone.

The Community Services Council survey also gathered information on claims in the voluntary sector. Of the 68 groups with some form of insurance coverage eight (12%) had made a claim in the previous 24 months, and eleven organizations (16%) had made a claim in the past 2-7 years. Ten organizations reported they had made a claim which was denied.

The Consumer Advocate suggested that there appears to be a disconnect between claims and premium costs. In his June 29, 2005 submission the Consumer Advocate suggested that, while the incidence of claims being made by volunteer organizations is reported to be low, premiums have increased significantly. Concern was expressed that the insurance industry does not adequately collect and make public claims data to support the premiums charged, making it effectively impossible to determine whether the rates charged are reasonable.

Hospitality Newfoundland and Labrador also raised the issue of individual experience rating in the tourism sector. According to Hospitality Newfoundland and Labrador, because individual experience rating is not used, operators that are claims free are being penalized for the lack of diligence of other operators. Many operators who invest considerable time and money into minimizing risk exposure do not receive the benefit of this investment in premium savings because of the activities of other operators who do not manage their risks.

There were also questions raised about how insurers recognize programs that are put in place to reduce risks and liability concerns. For example, the lounge industry and the adventure tourism sector in partnership with Hospitality Newfoundland and Labrador have implemented risk management strategies in their businesses in an effort to reduce risk exposure and to improve the cost and availability of commercial insurance coverage. However, according to Hospitality Newfoundland and Labrador, these efforts have not had the desired effect. The Consumer Advocate reported that Hospitality Newfoundland and Labrador was advised by brokers that the lounge operations which had their bartenders and alcohol servers trained in a nationally recognized training program would not experience lower insurance rates as a result. The Consumer Advocate also reported that individual tourism operators essentially have no idea how they are being grouped or classified for rate setting purposes.

Representatives of the voluntary sector also stated that the relationship between having a risk management plan in place and the insurance premiums paid is not known. There is a concern, however, that premiums are not reflective of the real risk of voluntary organizations but rather perceived risks. It was suggested that the insurance industry does not understand the voluntary sector and the real risks of the activities undertaken, and that many low risk organizations are not being differentiated from those with higher risk profiles.

5.4 Lack of Insurance Knowledge and Information

The general lack of information and knowledge on insurance, especially for commercial insurance, was an issue for many consumers. Several presenters expressed concern that commercial insurance consumers may not know what type of insurance they need, how much coverage they should have, and what specific steps they could take to reduce their overall insurance costs. This concern with lack of knowledge also extended to the insurance industry and the extent to which the industry players, including brokers, understood the various sectors, or were aware of the various insurance products that might be available to them.

Access to information was a significant issue for the voluntary sector. According to the Community Services Council few voluntary, community based organizations have adequate knowledge of the industry to make informed decisions about their insurance needs. Many respondents to the Community Services Council survey reported that they did not know enough about insurance to understand what types of policies were needed for their organizations, or where to obtain them. In addition brokers and insurance companies may have a limited understanding of the risks and liabilities associated with this sector but, for many groups, the industry is the only source of insurance information available. The Community Services Council stated that this information gap could result in non-profit groups obtaining unnecessary policies, accepting exclusion clauses for important coverage, or omitting coverage for real risks.

Ms. Penny Rowe of the Community Services Council highlighted the lack of insurance knowledge and information for the voluntary sector in her presentation to the Board:

> *"…if you're the XYZ organization and you want—you know that you should be concerned about insurance, to whom you turn? Well, I can tell you many of these people call me because I'm the only person they've heard talking publicly about this issue. Now, it's not in my job description to be an insurance advisor. And even if I had the time to do it, knowing what I need to know to tell people is quite difficult. So, there is a huge lack of opportunity to get what I call unbiased or neutral information.*
>
> *There's certainly a lack of knowledge on the part of agents and brokers about the needs of the sector. And for those who do know anything about the sector, they tend to treat us all as if we're the same."*

In a meeting with the Board Mr. Craig Rowe, the former Newfoundland and Labrador President of the Risk and Insurance Management Society (RIMS), stressed the importance of education for insurance consumers:

> *"Again, I think education is key. I think making consumers aware that they, what they do does have an impact on the results of the insurance marketplace and just some -- people just – and I talk to a lot of people because I speak to groups and it's people just don't have the basic knowledge that they need. There's some very simple basic things that people should and could be doing that they're not and education is the answer to that."*

5.5 Board Comments

Most of the concerns with respect to commercial property and liability insurance related to the significant premium increases experienced by many businesses and organizations during the period 2001-2003. It is clear from the submissions that many organizations experienced what could be termed as "rate shock", with reported increases ranging as high as 500% or more for some businesses. While most of the issues raised related primarily to liability insurance, there were also reported problems with large premium increases for commercial property insurance as well.

To the extent that these increases have resulted in businesses and organizations no longer being able to afford to purchase necessary insurance coverage it can be said that these increases have resulted in accessibility issues for commercial insurance consumers. While the commercial insurance product may have been available in the market, the cost has made the purchase of the insurance prohibitive. Some commercial consumers responded by reducing their insurance coverage and/or increasing their deductibles in an effort to reduce their premiums.

The Board heard from many stakeholders on the options and solutions that could be implemented to address the issues raised with respect to commercial property and liability insurance. In many instances these proposed solutions were similar to those raised during the homeowner phase of the review, and included the need for increased communication and awareness of insurance issues for all stakeholders and the need for consumer protection in some areas. Other specific solutions identified to address commercial insurance issues involved risk management, data collection and reducing taxation. In the following section the Board has reviewed these possible solutions and others with a view to identifying how they may address the affordability and associated accessibility issues raised.

The voluntary sector received considerable attention during the review. All stakeholders recognized that this sector faced particular challenges that will require a directed commitment if these issues are to be adequately addressed. For this reason the Board has addressed specific options in relation to the voluntary sector in a separate section.

6.0 OPTIONS AND OPPORTUNITIES

6.1 Introduction

Having consolidated each and every matter raised with the Board into specific issues, this part of the report focuses on options and opportunities to address these issues. As indicated earlier the Board met with the Consumer Advocate, industry representatives and other participants in roundtable discussions, stakeholder meetings, and follow-up interviews. These sessions were facilitated by the Board with a view to discussing which options or solutions, if any, offered potential to remedy issues and concerns raised by consumers.

This section of the Report brings together the relevant recommendations, suggestions and ideas arising from these discussions and subsequent submissions into a comprehensive collection of options and opportunities for consideration by stakeholders. These options include initiatives aimed at consumer protection and consumer assistance, improved communications and education, and options to address other issues raised specifically with respect to homeowners and commercial insurance. This section also deals with the particular challenges faced by the voluntary sector and outlines some dedicated actions that may assist that sector in more successfully coping with its insurance needs. Because data issues were a common concern for a number of stakeholders, and in particular the lack of product specific data related to losses and claims, this section also examines alternatives for enhanced data collection. Finally, the Board outlines other public policy options raised during the review for consideration by Government.

In his final submission the Consumer Advocate supported the Board's approach in suggesting that on a go-forward basis stakeholders, including Government, may wish to consider putting in place a series of workable and practical tools or solutions aimed at mitigating consumer concerns along with alleviating industry and political pressures in advance of the next hard market.

6.2 Consumer Protection Options

6.2.1 Consumers "Right to Know" versus Customer Service

Both IBC and IBAN acknowledged there may be a variety of consumer questions or concerns that need to be addressed through better communication with consumers. Industry representatives referred to existing voluntary codes of conduct or bill of rights already in place that address among other things the consumer's right to be informed. The industry cautioned that any measures to mandate the provision of information to consumers may detract from existing customer service and may prove detrimental to the current competitive environment.

One industry representative stated:

> *"Now I know the issue at hand here is a good discussion about consumers having access, consumers feeling as though they've got a communicated avenue to go down, but I'm always apprehensive to have a cookie cutter design in a fiercely competitive environment."*
>
> *"…it goes back to the point of differentiating our service commitment to the customer. You know, we strive for the highest levels of customer satisfaction."*

Both IBAN and IBC agreed with these comments, with an IBC representative also observing:

> *"I do not feel there should be an imposition on this Industry that on some mandated regulated basis that they have to say certain things to their customers in a certain way at certain times of the year. That's what you're (Consumer Advocate) suggesting and I think that's wrong. You want to just kill competition in this Industry and everybody do the same thing all the time?"*

The Consumer Advocate responded to IBC's caution in his written submission on commercial insurance:

> *"The argument is that those insurers and brokers who do the best job at designing their products, setting their prices and delivering customer service are rewarded by the marketplace and those that do not do those things are not rewarded and do not attract customers or at least do not do so as well as those who do. One can accept this theoretical premise but it is not at all clear to the Consumer Advocate how prescribing certain minimum standards is injurious to the ability of insurers or brokers to continue to differentiate themselves on the basis of either product, price or customer source. Much less evident is how the insistence that certain minimum standards be maintained can in any way limit competition and thereby be injurious to the public interest."*

The Consumer Advocate submitted that consumers should be provided with a minimum level of information as part of their insurance purchasing decisions. He argued by way of example that mandatory disclosure of all deductible options and the associated premium impacts should not simply depend on individual customer services but comprise matters that consumers have a right to know and are consistent with IBC's and IBAN's own fundamental codes, rights and protocols.

In relation to homeowners insurance the Consumer Advocate submitted:

> *"It is submitted that as an alternative to intensive forms of regulation such as rate regulation which are expensive to establish and maintain and which may have the unintended effect of discouraging insurers from participating in the relatively small Newfoundland and Labrador marketplace, consumers should be given the tools they need to make the marketplace work for them. The chief tool to empower consumers is knowledge. In recognition of the fact that the insurance product is not generally well understood by consumers, it is vital to the consumers' interests that they be provided with as much knowledge as reasonably possible to help them in their purchase decisions. This provides the impetus for such initiatives as mandating full disclosure as to deductibles, commissions and discounts. A consumer who does not know his or her options and who may not know enough about the product to ask about the options that may exist can hardly be expected to exercise his or her options to his or her greatest benefit."*

According to the Consumer Advocate consumers *"…have a right to know, and we should have a right to know without asking, it seems to me."* The Consumer Advocate recommended that mechanisms be put in place to enshrine this "right to know" for consumers. These recommendations include a Consumer Bill of Rights and mandated disclosure of certain information, as well as mandated minimum notice periods for cancellation or non-renewal.

The Canadian Federation of Independent Businesses preferred a formal, voluntary approach to a legislated, mandated one and felt it was the responsibility of organizations like the Federation to remind people of their rights. The Community Services Council observed that the more formal things get at times the less effective they become. On balance, however, in addressing whether or not to mandate these mechanisms they favoured the enshrined approach.

The options for addressing the issue of transparency and disclosure for consumers include reliance on voluntary industry codes already in place or, as suggested by the Consumer Advocate, the adoption of a Consumer Bill of Rights and the mandated disclosure of certain information to consumers. These options are discussed further below.

6.2.2 Voluntary Industry Codes

Both IBC and IBAN currently have voluntary codes in place for their members. These codes address matters related to the interaction between insurance companies, brokers and consumers, and address the issue of transparency and disclosure of information to consumers.

IBC's Code of Consumer Rights and Responsibilities was introduced in January 2005 and is intended to provide consumers with information on their right to be informed, to be treated fairly, to timely complaint resolution, and to privacy. (See Exhibit 4) The Code also addresses the responsibility of consumers to ask questions and to provide complete and accurate information to their insurance company. In its written submission on commercial insurance IBC advised that the existing Code of Consumer Rights and Responsibilities was modified in January 2006 in response to recent industry discussions with commercial insurance consumers.

The Insurance Brokers Association of Canada (IBAC) has published Principles and Practices for the Sale of Products and Services by Property and Casualty Insurance Brokers, dated June 2004. (See Exhibit 4) This document is focused on best practices and addresses matters such as the interests and needs of the client, professionalism, confidentiality, conflicts of interest, general information disclosure, and client redress.

Both these conduct codes are voluntary and are available on the organizations' websites. Other than accessing the respective websites it is not clear how these codes are communicated directly to insurance consumers.

In its written submission on commercial insurance IBC also advised that it has recently approved Standards of Sound Marketplace Practices. IBC stated that these standards are *"…one of a number of building blocks in an emerging new approach to market conduct supervision in Canada."* The standards are intended to ensure:

- Informed and transparent sales transactions;
- Development of competitive products tailored to meet the ongoing needs of consumers;
- Competent and professional insurance representatives that conform to a specified code of ethics;
- Fair claims settlement and claims handling; and,
- Timely, accessible and responsive complaint handling.

According to IBC these Standards of Sound Marketplace Practices in conjunction with the Consumer Code of Rights and Responsibilities *"…create meaningful incentives for insurers and intermediaries to achieve better public policy outcomes for insurance consumers. Neither the Code or the Standards existed during the past hard market."*

6.2.3 Consumer's Bill of Rights

According to the Consumer Advocate consumers require specific rights, not broadly stated rights or principles as set out in current voluntary insurance and broker industry codes. These broadly stated principles are potentially open to differing applications and interpretations and lack the force of law. The Consumer Advocate noted:

> *"The question is do we want consumers to know the relevant information or do we want to take the chance that they will be told? Too often, the industry codes actually employ a 'reverse onus'. For instance, 'upon request' IBAC states that the P&C Broker will disclose all fees payable. What becomes of those consumers who did not know they had a right to ask? What is the mischief with disclosing all fees as a matter of course just as every other service provider in today's society does as a matter of course. Consumers, with this information, could use it in their buying decision. This helps competition."*

In addressing the need for a homeowners insurance Bill of Rights the Consumer Advocate submitted:

> *"It is the rightful role and responsibility of Government to ensure that homeowners insurance consumers have meaningful and substantive rights and that they be informed of those rights. While consumer awareness campaigns are important and should be undertaken (for example, to explain the impact that deductible choices can have on premiums) they cannot replace the mandating of the disclosure of such information at point of sale. A Bill of Rights that is made available to consumers as a matter of course is in itself an ongoing consumer education initiative…"*

The Consumer Advocate provided a proposed Homeowners Insurance Bill of Rights for Newfoundland and Labrador. (See Exhibit 5) This Bill of Rights, which the Consumer Advocate suggested would be formally adopted by the Superintendent of Insurance, sets out basic rights for consumers regarding their homeowners insurance in areas such as:

- Cancellations, Non-Renewals, Coverage Restrictions and Premium Increases
- Explanation of Denial of Insurance Coverage/Use of Previous Denials
- Use of "Non-Claims"
- Property Condition
- Choice of Deductibles and Premium Impact
- Available Discounts
- Broker Affiliations
- Broker Commissions
- Broker Disclosure of Insurer Access and All Quotes Obtained
- Plain Language on Oil Spills Coverage and Sewer Back Up Coverage
- Monthly Payments
- Missed or Dishonoured Premium Payments
- Information and Complaints

The concept of disclosure of certain information as outlined above is presently addressed for automobile insurance consumers in the Province. Section 6.2 of the *Automobile Insurance Act* requires an agent, broker or representative to, on request, provide a person with the names of all insurers with whom the agent, broker or representative places business and all information obtained by the agent, broker or representative relating to quotations on automobile insurance for a person. The Consumer Advocate noted:

> *"While this is a laudable provision, it falls short of achieving meaningful disclosure because most insureds do not know that they have a right to receive this information and unless they ask they probably do not receive it. It is submitted that competition would be enhanced and premiums potentially lowered if brokers and agents were obliged to provide this information…"*

With respect to the need for a Homeowners Insurance Bill of Rights the Consumer Advocate stated that this is "*the single most important initiative which should be undertaken by Government following its review of the Board's report…*".

The Consumer Advocate also supported the concept of a Commercial Insurance Consumers' Bill of Rights. This Bill of Rights, which would also be formally adopted by the Superintendent of Insurance, would contain a summary of the rights of commercial insureds and also provide information on how to access consumer complaint mechanisms and how to avail of further consumer assistance.

Both IBC and IBAN countered that this level of specificity contained in a Consumer Bill of Rights is micro managing the relationship between the client and the insurer. It was argued such an approach would effectively mean retyping the policy in the form of a Consumer Bill of Rights and would detract from the ability of companies to differentiate themselves in terms of service commitment to their customers. Both IBC and IBAN (through IBAC) indicated they each have a

Bill of Rights or Code of Conduct, which are focused on various broad based commitments and are premised on a consumer's right to be informed as distinct from a consumer's right to know.

6.2.4 Mandated Disclosure

In this Province insurance adjusters, agents, brokers and representatives are already regulated under the *Insurance Adjusters, Agents and Brokers Act, R.S.N.L. 1990, c. I-9* and the Insurance Adjusters, Agents and Brokers Regulations (C.N.R. 989/96). For example, this legislation gives the Superintendent of Insurance the authority to investigate where there are reasonable grounds to believe that a person has engaged in an unfair trade practice or unconscionable act or practice relating to insurance. The Consumer Advocate suggested that, if Government desired to give legislative force to certain of the voluntary expressions of principle touching upon market conduct found within the IBC or IBAC codes, it could do so by amending the *Act* or regulations as appropriate. According to the Consumer Advocate: *"This would better ensure that the disclosure and transparency of key insurance information is actually being provided by brokers, agents and representatives to commercial insurance consumers rather than leaving it to the discretion of brokers, agents and representatives as is currently the case."*

The Consumer Advocate recommended the following specific matters related to disclosure of information be mandated under the *Insurance Adjusters, Agents and Brokers Act*:

1. Brokers and Agents must disclose to commercial insureds all available deductible options and the premium differences applicable to each deductible option when giving quotes by phone, in person or in writing and upon a renewal of coverage.

2. Brokers must disclose to commercial insureds in writing the amount of commissions payable to the broker for the sale of the policy(ies).

3. Brokers and Agents must, on request, provide a person with the names of all insurers with whom the agent or broker places business and all information obtained by the broker or agent relating to quotations on commercial insurance for the person.

4. A broker who is in part financed or owned by an insurer must disclose the affiliation to the insured before selling a policy issued by the insurer-affiliate to an insured.

5. Brokers and agents must, on request, provide a person with the name(s) of any insurers by whom they are in part financed or owned (i.e. affiliated).

In addressing the benefits of mandating these specific measures the Consumer Advocate stated:

> *"It is submitted that the foregoing measures are specific, readily capable of implementation and in keeping with the themes and principles expressed in the voluntary IBC and IBAC codes to which those organizations and their members adhere. They are aimed at increasing the knowledge of commercial insureds and making them more effective consumers. Moreover, as these reforms focus on the customer-broker relationship as opposed to the customer-insurer relationship, these cannot be reasonably seen as in any manner discouraging insurers from participating in the provincial marketplace."*

IBAN responded to this proposal by highlighting the work of the Industry Practices Review Committee (IPRC) for the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO). According to IBAN these issues of disclosure and transparency are being addressed on a national basis by the IPRC. The IPRC plans to make three recommendations to the CCIR and the CISRO that will address the Consumer Advocate's recommendations without having to take the additional steps of introducing additional legislation. The three recommendations concern i) priority of the client's interest, ii) disclosure of conflict or potential conflict of interest, and iii) product sustainability. Adoption of this approach will, in the view of IBAN, keep this Province on the same level playing field as the rest of Canada. A copy of the consultation paper *"Managing Conflicts of Interest: A Consultation Paper on Enhancing and Harmonizing Best Practices"* has been released for consultation, with comments expected to be received by the CCIR secretariat by March 24, 2006.

6.2.5 Underwriting Rules

As part of its regulatory supervision of automobile insurance rates the Board requires all companies to file underwriting and rate manuals for automobile insurance with the Board. The purpose of these filings is to allow the Board to effectively deal with customer inquiries and complaints in regards to rating and to assist Board staff in the conduct of compliance audits. Unlike automobile insurance however, rate and underwriting manuals for other insurances are not routinely filed with any regulatory authority in the Province. As far as the Board has been able to ascertain this is the case in all jurisdictions in Canada.

To assist the Board in considering whether oversight of underwriting guidelines present a solution to some of the issues raised, the Board requested insurers submit copies of their underwriting guidelines for review. While underwriting manuals were provided by insurers for homeowners insurance, they were generally not provided for commercial insurance. As discussed in Section 2.3.4, commercial risks are rated based on the underwriter's individual assessment of the risk using their experience and judgement, and taking into account a wide range of factors that differ for each insured. As such insurers generally do not maintain comprehensive underwriting guidelines in reference to commercial risks. In this context oversight of underwriting guidelines in the commercial insurance context was not brought forward by anyone as a practical alternative. The Consumer Advocate said:

> *"Through this review it has become evident that there are limits as to what can be reasonably done by regulators and government in this province to shield consumer from high prices in the commercial insurance marketplace. It is not in the interests of consumers in this province when the marketplace is already small and fragile to attempt to regulate rates and underwriting rules and thereby discourage insurers from participating in the market. Commercial insureds need more insurance options, not less."*

The Consumer Advocate also expressed concern about the potential ramifications that may arise from efforts to unduly regulate underwriting rules, stating:

> *"These potential ramifications may include availability issues where insurers choose not to write in a province where undue restrictions are placed on their ability to make underwriting determinations. For example, it is rather common for insurers to be somewhat restrictive in the acceptance of boarding/rooming houses particularly where the residence is not owner-occupied. Introducing a rule which prohibited such restrictiveness may discourage a particular insurer from participating in the broader market to the detriment of consumers generally. Accordingly, in principle it would appear that interference with an insurer's rule that goes to a risk-related item should be avoided."*

However, the Consumer Advocate did express concern that consumers be protected from being subjected to underwriting rules that are unfair, unreasonable, arbitrary or discriminatory as a matter of sound policy. In respect of homeowners insurance the Consumer Advocate suggested that the Province may wish to consider introducing legislation prohibiting the use of grounds to decline to issue, terminate or refuse to renew a contract which are in themselves or in their application subjective, arbitrary, bear little or no relationship to the risk or are otherwise contrary to public policy. This would be consistent with legislation recently introduced for automobile insurance under s. 96.1 of the *Insurance Companies Act*.

Several other underwriting reforms recently introduced for automobile insurance consumers in the Province under The Automobile Insurance Prohibited Underwriting Regulations were also suggested by the Consumer Advocate as worthy of consideration for homeowners insurance consumers:

- Homeowners should not be penalized for claims that result in no loss to the insurer, including those circumstances where an insurer makes an inquiry about whether a loss or event is covered but does not make a claim. The Consumer Advocate suggested that such inquiries should be able to be made by consumers without ramification provided the loss or event in question does not materially increase the risk insured.
- Insurers should not be permitted to decline to issue, terminate or refuse to renew a contract for homeowners insurance where an insured failed to make a payment to an insurer or a payment was dishonoured other than the first payment due on a contract, if the missed or dishonoured payment was replaced within 30 days of the date on which it was originally due. In addition, a missed or dishonoured payment as above cannot be used as part of a risk classification scheme.
- Insurers should not be permitted to base its decision not to accept a risk on the grounds that one has in the past been declined insurance or refused a renewal of insurance. Each insured's application should be judged on its own merits.

The Consumer Advocate also suggested that homeowners should have the same rights as automobile insureds under s. 6.3 of the *Automobile Insurance Act* as it relates to the ability to pay the premium by monthly instalments.

In its 2004 report on homeowners insurance the NSIRB recommended that:

> *"Government require insurers to file with the Board for public disclosure, their homeowners rate manuals, excluding proprietary underwriting rules of guidelines."* (Recommendation 15, pg. 102)

According to the NSIRB:

> *"The action could bring more discipline to the insurance rating process by requiring the premiums charged by insurers to be published in a manual. The rate manuals would help Government monitor rate changes, identify and monitor trends, help in the resolution of rate disputes. Access to manuals could also be of assistance to the Insurance Consumer Advocate particularly if the Board's recommendation charging the Insurance Consumer Advocate with responsibility for both maintaining a complaint database and for a dispute resolution process is adopted. It would also be helpful to those members of the public that wish to better understand how their premiums are determined. The Board believes that this may also increase competition."*

A further recommendation put forward by the NSIRB would require insurance companies to submit homeowners insurance rate profiles to the Board for posting on the Board's website. Insurance companies would update these profiles as their rates change. While acknowledging that there would be costs involved in maintaining up-to-date profiles on the website, the NSIRB suggested that the publication of rating profiles could serve to increase competition and help stabilize premiums.

Mandated filing of underwriting and rate manuals for homeowners insurance in the Province would allow for monitoring of rate changes and trends on an annual basis. It may also assist in answering questions from consumers regarding underwriting criteria and in the resolution of disputes regarding rating and premium issues.

6.2.6 Notice of Cancellation or Non-Renewal

Under existing legislation in this Province a contract for fire insurance can be terminated by the insurer with 15 days notice of termination to the insured by registered mail or 5 days written notice personally delivered. (*Fire Insurance Act, R.S.N.L. 1990 c. F-10, s. 5*) There is no legislated minimum notice period if an insurer decides not to renew such a policy. This legislated notice requirement for termination is the same across Canada. There is no mandated minimum notice period in the Province for non-renewal or for insurers to advise of premium increases, regardless of the magnitude of the increase.

IBC advised the Board that it is standard practice for insurers to provide 45 or 60 days notice to consumers regarding a termination of coverage, depending on the renewal cycle of the company. IBAN stated that in their view most insurers provide adequate notice to consumers.

While the industry stated it is standard practice to give 45 to 60 days notice commercial consumers reported inadequate notice. The Consumer Advocate in his June 29, 2005 submission advised that the Canadian Federation of Independent Businesses reported that a national survey of its members in May 2002 showed that only 50% of business owners were notified in writing 30 days in advance of changes to their policy. Similar concerns were expressed to the Board during the review by other stakeholders.

This issue was considered by the NSIRB in its 2004 report, where it was noted that *"Insufficient notice has caused significant anxiety for the consumer who must obtain insurance elsewhere, very quickly. This can be difficult to do, and when this occurs, it is identified by the consumer as a lack of availability of insurance."*[25] The NSIRB recommended:

> *"Government require that policyholders be given at least 45 days prior written notice of non-renewal, cancellation, coverage restrictions and premium increases, along with a full explanation of the reasons."*

In making this recommendation the NSIRB acknowledged that even 45 days notice of non-renewal may not be enough time for the policyholder to make alternative insurance arrangements, particularly in a hard market.

The Consumer Advocate supported this recommendation as a good starting point for this Province but highlighted a number of issues that must be first addressed before such a recommendation is implemented. The Consumer Advocate pointed out that the recommendation as presented does not allow an insurer to make an earlier termination when there may exist very valid reasons to do so. These reasons may include non-payment of premium, fraud or material misrepresentation in obtaining or continuing coverage or in presenting a claim under the policy, or a substantial change in risk after a policy has been issued or renewed. These situations are, according to the Consumer Advocate, all reasons that would justify a shorter notice period than the 45 days proposed.

IBC advised the Board that is has recently amended its Code of Consumer Rights and Responsibilities to address the issue of notice to insureds. This change involves adding the following:

> *"Under normal circumstances, insurers will advise an insurance customer or the customer's intermediary of changes to, or the cancellation of a policy, at least thirty days prior to the expiration of the policy, if the customer provides information required for determining renewal terms of the policy at least forty-five days prior to the expiration of the policy."*

[25] NSIRB Report, pg. 78.

In its written submission on commercial insurance IBC stated:

> *"The revision to the Code addresses concerns that all insurance consumers (including commercial insurance consumers) should be advised well in advance when a policy is not going to be renewed, or when significant changes to the policy or premium are expected. The Code also clarifies the consumer's obligation to make sure that their insurer always has up-to-date information."*

This amendment to the code was acknowledged during the review but it was emphasized that there must be communication of this amendment to insureds if it is to be effective. In addition, the Canadian Federation of Independent Businesses spoke of lingering concerns about how to make sure the standard set out in the code is followed by the industry.

In his written submission on homeowners insurance the Consumer Advocate also addressed the substance of the notice and the remedy to the consumer. In addressing the substance of the notice the Consumer Advocate suggested:

> *"…there should be no real debate as to whether insureds should have the right to be given a full written explanation as to why their insurer has decided to cancel, non-renew or restrict their coverage or increase the premium. Long-term customers particularly are entitled to such treatment. The real debate is whether the reasons or explanation advanced should only be acceptable if they meet a certain prescribed standard."*

With respect to the issue of a remedy for the consumer the Consumer Advocate suggested that, if consumers have a right to not have their policies terminated or non-renewed except on permitted grounds, then there must be a recourse for protecting that right. This could be in the form of regulations stipulating what constitutes "full explanation" and/or setting out the parameters for the reasons to be provided. Under such a regime, according to the Consumer Advocate, "*the Superintendent would not hold hearings or have the power to keep coverage in force, but would require the power to order an insurer to comply with its duty to provide full and specific reasons to the consumer for its decision where an explanation failed to meet the requirements of the province."* The Consumer Advocate submitted that establishment of such a mechanism:

> *"…does not involve mandating the type of risks that an insurer must keep on its book of business and therefore it avoids the potential for availability concerns in two aspects: 1) it should not discourage new market entrants or discourage those already participating in the province and 2) it does not discourage insurers from writing less than ideal risks for fear of later being unable to cease underwriting the risk in question. On the other hand, providing insureds with specific reasons as to why their coverage is being terminated, non-renewed, restricted or increasing in price is not too much to ask and should go some ways in reducing complaints of consumers. Moreover the moral suasion that accompanies an obligation to fully explain one's actions may lead to more sensitive decision making in the future. Finally, such a measure coupled with an ongoing obligation on the part of insurers to report the reasons for non-renewals or cancellations on a periodic basis to the regulator would assist the regulator in keeping abreast of what is occurring in the marketplace."*

IBC submitted that this Province should not adopt legislation to mandate notice periods that differs from other jurisdictions in Canada, particularly when there are no significant number of complaints regarding the notice period for termination of an insurance policy. Wherever possible reform should be implemented nationally or at least regionally. IBAN supported voluntary compliance as opposed to a legislated approach. Insurers generally supported IBC's position with a number of insurers reiterating that the majority of consumers receive a minimum of 30 days notice except in the case of a significant material change in risk. Many insurers also stated that the notice period could be extended when lapsing a policy at renewal to allow adequate time for the broker or insured to find alternate coverage.

The Consumer Advocate acknowledged and confirmed the concerns expressed by the industry with reference to ensuring that any legislative reforms with respect to commercial insurance should be made carefully and to the extent possible in the context of similar changes in other jurisdictions.

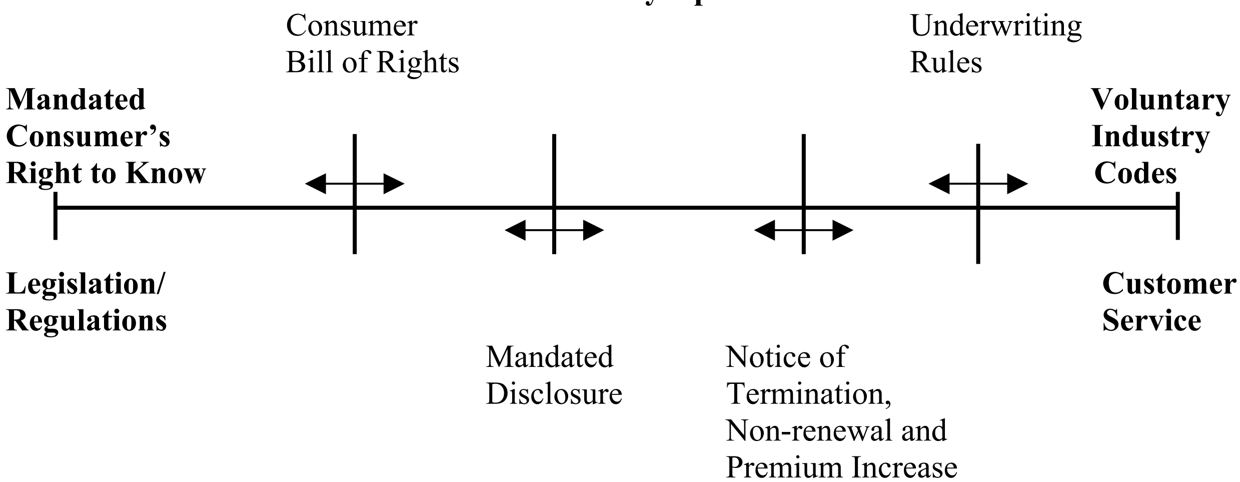
The Board examined various consumer protection practices in other jurisdictions in Canada and the United States to obtain information concerning practices in the area of underwriting guidelines, rate approvals and notice periods for homeowners and commercial insurance. Exhibit 6 provides a summary of the results of this research. This information indicates that, for the jurisdictions in Canada responding to the Board's survey, there appears to be no regulation or mandated requirements in place for the filing and/or approval of underwriting guidelines or rates for homeowners or commercial insurance. There are also no minimum requirements in place for the provision of information with respect to cancellation or non-renewal of policies. With respect to notice periods the minimum 5-15 day period as required by legislation is observed, although Nova Scotia has indicated a minimum notice period of 30 days for non-renewal of a policy. None of the jurisdictions in Canada responding to the Board's survey have adopted a consumer Bill of Rights.

By contrast, in the United Stated there are considerably more requirements on insurers with respect to these consumer protection issues, with many states setting out specific prohibitions and restrictions on insurer practices for underwriting rules, information to be provided with notices of cancellation and non-renewal, and also minimum notice periods.

6.2.7 Board Comments

A prime consideration for Government is whether or not any of the solutions designed to address issues of transparency and disclosure should constitute a "*consumer's right to know*", possibly enshrined in legislation or less intrusive regulation as suggested by the Consumer Advocate, or alternatively, remain as customer service and competitive performance standards among insurance companies as argued by IBC and IBAN. For decision-making purposes, the Board has conceptualized these solutions as public policy choices for Government arranged along a continuum between each of the alternatives. This continuum reflecting public policy options is illustrated as follows:

Consumer Protection
Public Policy Options



Each of these options, therefore, may be considered by Government anywhere along this continuum. For example, the Province may legislate a Consumer Bill of Rights similar to that proposed by the Consumer Advocate or accept IBC's Consumer Code of Rights and Responsibilities as a voluntary measure or indeed collaborate with industry to formulate a joint proposal, which may or may not have the force of law. Matters such as mandatory disclosure, notice periods and underwriting rules can either be the subject of soft regulation as argued by the Consumer Advocate, or comprise industry driven standards based on the customer service and competitive performance of individual companies. The Board points out that, outside of possibly using moral suasion on the industry, there is limited middle ground regarding whether or not to regulate matters concerning notice periods and underwriting rules.

The question of whether these market conduct aspects of the homeowners and commercial insurance sector in this Province should be regulated or supervised more closely is a policy decision for Government. In the commercial insurance context, many of the insurance consumers and organizations participating in this review favoured a voluntary non-regulated approach to market conduct issues. The Consumer Advocate stated in his written submission on commercial insurance:

> *"The Consumer Advocate acknowledges that a balance must be struck in the commercial insurance context between the goal of ensuring rights that rights exist and are uniformly recognized in practice on the one hand (through legislating in relation to certain matters touching upon market conduct) and not interfering with the marketplace to such a degree that insurers do not wish to participate in the provincial marketplace."*

Both a Consumer Bill of Rights and other similar measures were considered by the Board in the Automobile Insurance Report. Because of the commonality among consumers of transparency and disclosure issues, any commitment by Government to a Consumer Bill of Rights or other measures proposed should be capable of addressing these issues for all insurance products.

6.3 Consumer Assistance Options

6.3.1 Introduction

Consumer assistance can be supported and provided through a number of different mechanisms. These can range from providing information on a website for consumers to access directly as needed, to providing a 1-800 number for consumers to make specific inquiries, to printing and distribution of print material to provide general information or to respond to specific issues, to a more structured formal approach where consumers have access to a wide range of consumer assistance programs, including a formal complaints and investigative process. The decision as to the best vehicle to deliver consumer assistance is influenced primarily by available resources and the desired outcome of such a program.

6.3.2 Consumer Complaint Resolution

All stakeholders agreed that consumers should have access to an efficient and meaningful consumer complaint resolution mechanism. According to the Consumer Advocate this access should be enshrined in a Consumer Bill of Rights and should be designed to be responsive to the needs of consumers. The Consumer Advocate submitted that the following are necessary for consumers:

- Consumers should be advised as part of a Bill of Rights that they have a right to avail of an insurer's internal complaint resolution process to resolve any disputes.
- The address and contact particulars of the complaint resolution office of the insurer must be provided to the consumer upon request.
- The Consumer should also have the right to complain to the regulator about any insurance company and/or insurance matter and to receive a prompt investigation and response to the complaint. The data to be collected and the steps to be followed by the regulator in addressing the complaint should be consistent for each complaint and should involve the insurer or broker.
- The regulator must have the necessary ability and authority to deal with the complaint, including the enforcement of the laws of the Province.

In its 2004 report to Government Mercer also recommended a complaint review process, including at a minimum:

- The creation of a ratio of complaints to risks in force (complaint ratio), by company, by line of business, to help determine whether any particular company/companies are responsible for an abnormal percentage of complaints.
- The tracking of the number of complaints by line of business to see if there is an increasing or decreasing trend, and to help determine if there may be affordability or availability issues.
- The monitoring of complaints against broker/agents to determine if fraud or poor service levels is revealed.
- A consideration whether complaint ratios should be published to assist in holding companies accountable for their activities.

The CCIR is currently piloting a complaint reporting system in Ontario and Quebec. In referring to this pilot project IBC suggested that this Province may be asked to join within a year at which time insurers will begin to file their data with the regulator, stating:

> "*The process was developed over many months and it was done collaboratively between regulators, the P & C industry and the life industry is also taking part in it as well. So I would assume that all parties are happy with the pilot that's going forward now and given that we've all had a hand in it. And we support it as well because, you know, one of the common themes you've heard from us is show us where the problem is before we get off to providing solutions.*"

The Office of the Superintendent of Insurance advised the Board that it currently handles enquiries and complaints from insurance consumers in the Province. Under insurance legislation the Office also has the power to make enquiries of insurers, representatives and agents, brokers and adjusters (licensees) and they have an obligation to respond. The Office also responds to consumer questions and concerns on insurance issues generally, and may send additional information if required.

6.3.3 Market Assistance Programs for Hard to Place Risks

A market assistance program is a program where insurance companies consider applications from consumers who have been unsuccessful in obtaining an insurance policy in the regular markets, usually because they present higher risks than the regular market is willing to accept. Essentially this type of program aims to connect a consumer needing insurance with an insurance company that may be willing to write the risk. These programs are usually voluntary and managed by the industry through the brokers and agents writing in the regular market.

The existing IBAN program for homeowners in downtown St. John's is an example of a market assistance program. This plan was set up by IBAN to address concerns of homeowners in downtown St. John's who were having difficulty accessing insurance. The intention of the plan is to assist consumers who have shopped the market themselves but still find themselves in a position of not being able to purchase insurance coverage. A consumer in this position is referred to IBAN by either the Superintendent of Insurance or by a broker. Upon receiving a referral IBAN will go the next broker in the "queue" in rotation to help the client. Since its inception there have been 40 referrals to IBAN from the Superintendent of Insurance for market placement assistance from downtown residents and IBAN reports that 38 of these referrals were successful in obtaining homeowners insurance through the IBAN program. IBAN reported that the premiums for these hard to place risks would be higher than those in the "standard market", perhaps as much as 100% higher.

In its submission to the Board IBAN proposed that its existing informal program for downtown St. John's be formalized and expanded to increase access to homeowners insurance for households in the Province. The purpose of the plan according to IBAN will be to assist consumers who, after contacting the majority of insurance brokers and representatives in their area, are unable to obtain an insurance policy for their home. The program is not intended to replace the need for homeowners to shop for their insurance nor is it intended for homeowners looking for a lower premium. IBAN provided a copy of its proposed plan to the Board. (See Exhibit 7) IBAN also proposed that it use a standard form to collect information with respect to the program so that issues and concerns regarding availability can be monitored more closely.

The Board explored the possibility of whether the IBAN program could be expanded to cover commercial insureds in the Province who may find themselves unable to obtain insurance. IBAN expressed the opinion that, due to the complex nature of commercial insurance, this mechanism would not likely be in the consumers' best interest. IBAN stated:

> *"Unlike Homeowners Insurance where the product coverage is often bundled together in a "package policy" and the availability is much greater (most of our members would have access to most major markets and specialty markets for this product), this is not always the case with Commercial Insurance, especially those risks which can be unique in nature and exposure."*
>
> *"Also Commercial Brokers must spend more time assessing the risk, finding available markets, and dealing with Underwriters. Consumers need to be more involved in this process and need to find a Broker that they are comfortable with and one that they can develop a professional relationship with. Commercial Insurance requires the collection of more sensitive information which may be considered proprietary in nature and not everyone is going to feel comfortable in releasing this information to just anyone. Therefore, we do not feel that a "queuing" mechanism necessarily achieves the same outcome as the one proposed for Homeowners Insurance."*

Other than IBAN's program the Board is not aware of any other similar market assistance programs for insurance consumers in this Province. There is a similar program in Quebec but, according to IBC, the programs in Newfoundland and Labrador and Quebec are the only two of this kind in Canada. During the roundtable discussion on homeowners insurance IBC advised the Board that it is currently expecting a proposal to go before its Board in early 2006 to adopt the Quebec model in principle to be available in those jurisdictions where insurers would be interested in doing so. The program would be implemented on a voluntary basis and would be unique to each province's market.

6.3.4 Consumer Assistance Models

The Board explored a number of consumer assistance models in Canada and the United States with a view to understanding the extent of such programs and the associated mandates and responsibilities. Exhibit 8 contains a summary of some of these programs.

On the basis of this review it is fair to say that there are a wide range of consumer assistance tools and programs in place, with differing mandates and responsibilities depending on the jurisdiction. In the United States most of the consumer assistance function with respect to insurance is carried out under the auspices of the respective Commissioners of Insurance (or equivalent office or State department) in each state. These offices essentially are mandated to undertake the regulation of all insurance products and have a wide range of regulatory and oversight responsibilities. The consumer assistance functions are typically carried by Consumer Liaison Offices.

In Canada there is not as formalized an approach to consumer assistance as in the United States, perhaps because the insurance product is not regulated in the same manner. Most of the provinces have similar regulatory responsibilities vested with the Superintendents of Insurance or delegate. Most of these offices have mechanisms, either formal or informal, to handle consumer inquiries and complaints. The insurance regulator in Ontario, the Financial Services Commission of Ontario (FSCO), has taken on an educational role in that it distributes articles for publication in newspapers throughout Ontario, and also provides brochures, a web site, and responds to inquiries. These activities are aimed at providing the public with useful information regarding the purchase of coverage and the process that is available for dealing with complaints.

New Brunswick has established an Office of the Consumer Advocate as of January 2005 that reports directly to the Legislative Assembly. The Office works closely with the province's Superintendent of Insurance and has the authority to:

i) examine the underwriting practices and guidelines of insurers, brokers and agents, and report the use of any prohibited underwriting practices to the Superintendent of Insurance for further action;
ii) conduct investigations, with the authority to compel attendance at any enquiries convened, in relation to insurers, brokers and agents concerning the availability of insurance and the premiums charged;
iii) respond to requests for information with respect to insurance;
iv) develop and conduct educational programmes with respect to insurance for the purpose of educating consumers;
v) carry out tasks or investigations in relation to insurance matters or the insurance industry as directed by the Legislative Council; and
vi) represent consumers in any proceedings concerning automobile insurance rates before the New Brunswick Insurance Board.

The Office of the Consumer Advocate in New Brunswick is fully funded by an annual assessment on all members of the insurance industry licensed to operate in the province, prorated according to the premiums written by each member. The Office has 4 staff, including the Consumer Advocate.[26]

In his written submission on commercial insurance the Consumer Advocate suggested that it may be appropriate to expand the functions now carried out by this Province's Consumer and Commercial Affairs Branch of the Financial Services Regulation Division of the Department of Government Services to carry out this consumer assistance function. This branch currently handles inquiries and complaints from insurance consumers in the Province.[27] The Consumer Advocate stated:

[26] According to information obtained by the Consumer Advocate from the New Brunswick Office of the Consumer Advocate, from March 7, 2005 to March 7, 2006 the Office handled 1575 consumer queries, with approximately 70% of the questions being in relation to auto insurance, 15% being in relation to other types of insurance and a further 15% being in relation to actual claim related issues.
[27] The Consumer Advocate reported that, based on correspondence dated Nov. 24, 2005 from Douglas J. Connolly, Deputy Superintendent of Insurance in Newfoundland and Labrador, from 2002 to October 2005 the Financial Services Regulation Division was contacted by 760 consumers in relation to property insurance, 31 involving commercial insurance and 4 involving marine insurance.

> *"It may indeed be more advisable to place the expanded Consumer Assistance function (through an Office of Consumer Liaison) under the auspices of the Superintendent of Insurance in Newfoundland and Labrador from the point of view of being able to provide a fully integrated service to consumers. As the Board has heard from Jane Voll of IBC…the Canadian Council of Insurance Regulators will be considering a new framework for market conduct regulation at its next meeting in April, 2006. Part of the initiative involves a new system for gathering and reporting complaints that's been used in Ontario and Quebec and is expected to be used by all provinces in 2007. If it is adopted in Newfoundland and Labrador, there will be a new way available for the provincial regulator to track what issues consumers are having problems with and to follow up with the insurer involved. It would appear advisable to have a Consumer Assistance Model that can keep fully apprised of what is occurring on the regulatory front and provide "one-stop shopping" for consumers. This may be most effectively achieved by integrating the expanded Customer Assistance function and personnel within the regulatory operation that currently exists and thereby also draw upon the expertise and information that currently exists in that operation."*

The Board requested feedback from insurers in this Province on whether they would support an independent consumer assistance program which offered a broad spectrum of services including complaint resolution, education to consumers, liaison with industry, as well as market assistance to individual consumers, similar to that available in New Brunswick. Only two responding companies expressed support for this mechanism. Several companies responded by stating that many of these services are already available, either through internal complaint resolution processes, the General Services Ombudservice, which services all general insurance customers in Canada, or other services within government or brokers' associations, and that further duplication will add costs to the system.

6.3.5 Board Comments

As outlined in this section there are a number of mechanisms that may be put in place to enhance access for consumers to information and assist consumers with answering questions and resolving complaints. These mechanisms could include a 1-800 number, provision of print material, a website and/or a more structured approach such as a Consumer Advocate's office similar to that implemented in New Brunswick. The Board notes that all stakeholders agreed that consumers need access to an efficient and meaningful complaint resolution mechanism. Industry representatives pointed to a number of existing mechanisms for complaints and dispute resolution that consumers can access. These include individual company in-house complaint protocols, the Superintendent of Insurance, and the General Insurance Ombudservice, which is funded by industry.

However, as the Consumer Advocate pointed out, consumer assistance is not only concerned with complaints and dispute resolution, but encompasses the range of functions to assist consumers with their insurance needs, including answering questions and providing information about insurance products and speciality markets. While the industry is best positioned to carry out this role it was suggested by some during the review that a neutral source or clearinghouse of information was required. While there are existing mechanisms in place by industry to provide consumer assistance it is not clear to the Board that these mechanisms are well-known to consumers or whether they meet the needs of consumers in this Province. As an example, IBC currently has an Atlantic consumer information line based in Halifax with a 1-800 number. However, as far as the Board can tell, this number is not advertised in any phone directory in the Province and it is not clear how consumers are made aware of its availability other than through IBC's website.

As outlined in this section there are several vehicles available to Government to deliver an enhanced consumer assistance function, ranging from expanding its current role or establishing a separate entity such as a Consumer Advocate's office. Whatever mechanism is put in place it is important for consumers to know that it is available, how to access it, and also what services are being provided. Consideration should also be given to establishing a format for tracking of inquiries, questions and complaints from consumers that could be shared with industry stakeholders. This would allow for monitoring of issues and provide some opportunity to address concerns proactively.

One important role associated with any consumer assistance function is education and awareness. In the Board's view information is the most important tool that can be provided to insurance consumers to enable them to make informed decisions about their insurance purchases. The following section outlines the need for enhanced communication, education and awareness among insurers and consumers, and sets out examples of ongoing initiatives in this area.

6.4 Communication, Education and Awareness

6.4.1 Introduction

The need for increased communication, education and awareness among insurers and consumers is one issue that received widespread attention during these reviews, whether the subject was automobile, homeowners, commercial or marine insurance. This need was often expressed in different ways depending on the insurance product but always had its underpinnings in an information or knowledge gap between consumers and their insurer. In the Automobile Insurance Review Report the need for improved consumer awareness was reflected in terms of the high level of frustration and dissatisfaction among customers evident during the review. Consumer uncertainty associated with coverages such as oil spills and flood damage, the impact of deductibles and issues surrounding mandated repairs/renovations and replacement value coverage were all brought before the Board in terms of homeowners insurance. Furthermore, the complexity and diversity of the commercial insurance product raised a host of unanswered insurance questions from the business and voluntary sectors. The need for improved communications and education with respect to commercial insurance also emerged as a primary focus of the recommendations of the Atlantic Task Force Report. In addition, marine insurance involves its own set of special considerations for improved education and communications involving consumers and insurers.

6.4.2 The Need for Improved Education and Awareness

The objective of narrowing the information gap between consumers and insurers through enhanced education and communication initiatives was one of the few areas considered during the review that garnered the unanimous support of all participants.

The Consumer Advocate stated:

> "*The chief tool to empower consumers is knowledge. In recognition of the fact that the insurance product is not generally well understood by consumers, it is vital to consumer's interests that they be provided with as much knowledge as reasonably possible to help them in their purchase decisions.*"

The Atlantic Task Force Report noted:

> "*Miscommunication and misinformation, specifically between insurers and their customers, are at the root of much of the confusion and mistrust around how insurers determine the risks they insure and how they price those risks. Insurance industry representatives educated Task Force members about the relationships among risk factors, costs and premiums but is was agreed that broader education and clearer communications are needed about issues such as underwriting, pricing and risk.*"

Clearly if this was a conclusion reached in relation to stakeholder representatives participating in the Atlantic Task Force the knowledge gap can be expected to be even wider for ordinary insurance consumers.

It was noted that five of the 27 recommendations contained in the Atlantic Task Force Report place the responsibility with commercial consumers, in concert with their brokers/agents, to become more informed. These initiatives call upon consumers to understand their insurance policy, what they are paying, how their insurer does business and ask questions for clarification. In addition, consumers should educate their insurance representative concerning their business enterprise in order to assess risk and assign appropriate premiums. The Atlantic Task Force Report recommended dialogue be maintained among respective Task Force stakeholders to promote the implementation of these recommendations.

Ms. Penny Rowe of the Community Services Council, who was also a member of the Atlantic Task Force, referred to a report completed by her agency entitled "*Insuring Sector Survival: Insurance and the Voluntary, Community-Based Sector in Newfoundland and Labrador*". This report concluded that consumers in the non-profit voluntary sector for the most part, even among larger organizations, do not have the resources or expertise needed to dedicate to the task of properly understanding their insurance needs. Simply put Ms. Rowe indicated voluntary groups require information on what they need and what they're buying. She used directors' and officers' liability insurance as an example of a coverage impacting the volunteer sector that has a huge education piece attached to it. Ms. Rowe also recited numerous incidences where volunteer organizations are unable to have their insurance questions properly addressed by those selling insurance.

Mr. Jerry Dick, Executive Director of Association of Heritage Industries, echoed the need for more fundamental information in suggesting the Government should develop an insurance information package/educational campaign for volunteer organizations in terms of what is required and how to find the most affordable rates.

Mr. Stan Cook of Hospitality Newfoundland and Labrador stated:

> *"I think the education piece on both sides is the most critical part and educating the consumer in what the insurance options are, educating the insurer who their clients are, and become more knowledgeable on what their actual activities are, and how they're going about their activities. That I see as more critical, and also, I think the whole process of education will help the different operators and businesses to operate in a safer manner."*

Mr. Stephane Robichaud of the Canadian Federation of Independent Businesses described the situation where a difference in information available to one company versus the other regarding the impact of risk management on rates and availability of specific market insurance was reflected in a huge premium differential between the two companies.

Other participants including the St. John's Board of Trade and the Beverage Industry Association of Newfoundland and Labrador expressed support toward ensuring their memberships become more knowledgeable insurance consumers.

In discussing this issue during the review there was a consensus among stakeholders that improving the flow of communications between the insurance industry and consumers is not solely their responsibility. Other stakeholders who share a vested interest in supporting and sustaining the message may include Government, various trade associations, as well as business and voluntary support groups. There was a view expressed by insurance industry representatives that success in communications and educational programming is largely dependent on the need of consumers for the information. This need for information and related education and the vehicles through which this communication is delivered may be quite different for homeowners versus commercial insurance and is different yet again within the commercial product for the business and voluntary sectors. Experience has also shown that the need for increasing education and information is frequently driven by hardening market conditions and accompanying rising insurance rates or a specific consumer issue/claim. Outside of these circumstances industry noted that consumers for the most part display a lack of interest relating to their insurance needs. The Canadian Federation of Independent Businesses suggested, however, there may be additional motivation at this point for the insurance industry since it received a "black eye" during the last hard market.

6.4.3 Ongoing Initiatives

Industry and other participants in the review referenced various initiatives which may assist to improve communications and narrow the knowledge gap between consumers and their insurers. Many of these initiatives are referenced and discussed elsewhere in this report but are summarized below to show the range of ongoing activities in the area of communication, education and awareness.

Brokers

IBAN described itself as being on the front lines with consumers and having the ability to build relationships and impart information directly. IBAN spoke to increased professionalism among brokers and referred to broker schools being offered by some national companies as well as support for continuing educational credits for brokers similar to Ontario. IBAN also referred to an initiative involving their national affiliate IBAC and the Canadian Federation of Independent Businesses designed to provide feedback to the Federation's membership on insurance matters.

IBC

IBC noted upcoming workshops flowing from the recommendations contained in the Atlantic Task Force Report. The workshops will be held in various centers throughout Atlantic Canada and will provide information on risk management, underwriting and other aspects of commercial insurance to various sectoral stakeholders, including tourism, restaurant and food services, and the Canadian Federation of Independent Businesses members. Many of the Atlantic Task Force recommendations are directed toward improving communications and education and, according to IBC, this workshop initiative will cover some 15 of the 27 recommendations.

Other Atlantic Task Force recommendations call for the development and distribution of more consumer-friendly information, an updated IBC website, various initiatives aimed at specialty markets and promoting risk management practices. IBC indicated it would be expanding its stakeholder list to include boards of trade, rotary clubs, and like organizations along with providing advance advertising in trade publications for workshops, seminars and other informational events. IBC has committed to providing a multi-stakeholder report card on the implementation of these Atlantic Task Force recommendations and their impact on the availability and affordability of commercial insurance.

IBC also referred to its Consumer Information Center (incorporating a 1-800 line) located in Halifax which has developed protocols in concert with customer organizations (e.g. Sport Nova Scotia), assisted consumers with their insurance needs, and responded to complaints. IBC has also recently updated its website to provide information to insurance consumers on risk management practices.

Companies

Many insurers referred to their ombudservice and safety inspection process, which are aimed at assisting consumers. One insurer noted how, during the latest hard market and again just recently, its company sent out brochures to their customers explaining what was happening in the current insurance marketplace and its impact on rates.

Consumers

The Canadian Federation of Independent Businesses has taken a proactive approach to insurance serving the interests of its membership. While the Federation wants to find every possible way of getting information to its membership it was acknowledged that, as consumers, members have a clear obligation to represent their own interests as well. While Mr. Robichaud felt some of the tools are already in place, he felt they need to be supported and promoted and there must be a willingness by the insurance industry to do this. He observed that the industry's code of conduct is an item requiring greater awareness among consumers and that IBC's 1-800 number is not a good option for his members.

Mr. Bradley George, Director of Provincial Affairs with the Canadian Federation of Independent Businesses, also referred to an informal network with IBAN members, similar to that for hard to place risks in homeowners insurance, where members can turn when experiencing difficulties regarding their insurance. IBAN also observed that this type of networking also helps get their message out to boards of trade or like groups where the Canadian Federation of Independent Businesses members also participate.

Mr. Cook of Hospitality Newfoundland and Labrador spoke of his efforts, together with those of a number of his counterparts in other provinces, to proactively address insurance needs in the adventure tourism business. The result was that the group set about educating themselves on the insurance product and pursued a risk management approach to mitigating risk in their business. Mr. Cook also spoke of Hospitality Newfoundland and Labrador's commitment to training solutions targeted toward its broader membership. Mr. Cook referred to the various communication tools, such as E-mails, magazines, meetings, and training seminars, used to get key messages, including information on insurance, out to its membership.

The St. John's Board of Trade noted several further suggestions for businesses to open the lines of communication with their insurance companies/brokers. These are as follows:

- Consult regularly with brokers, especially well in advance of policy renewals. (There is an onus of the part of brokers here, too, to adequately communicate with customers, advising, and notifying them of changing or expiring policies);
- Be proactive in minimizing risk and claims, thereby keeping loss ratios low;
- Shop around with different brokers/companies and get more than one quote;
- Negotiate and seek clarification on the terms of policies;
- Opt for deductibles that offer the best cost-benefit trade-off (the higher the deductible, the lower the premium, generally); and
- Contact the Superintendent of Insurance if they cannot obtain coverage.

Governments

In 2005 the Alberta Voluntary Sector Insurance Council was formed to provide a mechanism for the voluntary sector, the insurance industry and the Government of Alberta to address insurance related issues in the broad voluntary sector. Among its many responsibilities are improved communications on insurance matters throughout the voluntary sector or, more specifically, the development of an Insurance Took Kit to assist with training for not-for-profits.

In 2004 the province of New Brunswick, in conjunction with its automobile insurance reforms, established an Office of the Consumer Advocate to among other things handle general inquiries regarding the cost and availability of insurance.

The Office of the Superintendent of Insurance in Nova Scotia has published a number of insurance guides for small businesses and non-profit organizations. These guides are available on the Nova Scotia government's website.[28]

Mercer's 2004 report to Government cited public education of loss control measures - either partnering with insurance carriers and/or agency groups or providing public awareness programs fully funded by Government - as a means of mitigating the impact of the hard market for homeowners insurance.

Regulators

The insurance regulator in Ontario, Financial Services Commission of Ontario (FSCO), has published a series of informational brochures covering a number of homeowners insurance issues. These brochures are available on FSCO's website.[29]

6.4.4 Board Comments

The importance of improved communication, education and awareness between consumers and insurers was acknowledged by all participants. There was recognition that all stakeholders, including consumer groups, trade and business development associations, voluntary support organizations and Government, can play a key role in education and narrowing the knowledge gap between consumers and the insurance industry. While consumers are directly accountable for their own insurance needs and others may provide support and advice, the primary responsibility for nurturing these relationships and fostering an environment where education and open communication can flourish rests with the industry. The industry has all the information which is being sought and should take ownership of the issue of how best to communicate this information to consumers. It is insufficient in the Board's judgment to view the current situation in a softened market as acceptable and it would be a mistake not to bring a focus to heightened communication, education and awareness of consumers to insurance issues before the next hard market.

[28] http://www.gov.ns.ca/enla/insurance/docs, [accessed online February 2006].
[29] FSCO Consumer Brochures: http://www.fsco.gov.on.ca/english/pubs/consumerbrochures/default.asp [accessed online March 7, 2006]

In the current "soft" market, with stable or decreasing premiums and fewer customer complaints, there may be less motivation to take any specific action with respect to enhanced consumer education and awareness. Without such action, however, it is not clear how this situation may change with the next hard market and what impact this would have on the accessibility and availability, not to mention the affordability, of insurance products in Newfoundland and Labrador. In addition, while the industry pointed to a number of measures currently underway to address improved consumer education and communications, it was suggested by some industry representatives that consumers become interested in their insurance policies and coverages only when premiums rise or claims occur or individual concerns come into play.

Since the last hard market there does appear to be a willingness and commitment on the part of the insurance industry to enhance the consumer's understanding of how the insurance business functions, to provide better product information, and to improve handling of consumer enquiries and complaints. This is manifested in the initiatives being undertaken on the front lines by brokers and insurance companies, as well as regionally through the work of IBC's Atlantic Task Force and nationally through other projects described above. The Board also commends the proactive approaches taken by groups such as Hospitality Newfoundland and Labrador and the Canadian Federation of Independent Businesses in assisting their members to become more informed insurance consumers. The Community Services Council has also undertaken significant work in raising awareness of insurance issues confronting the voluntary sector. This kind of heightened profile on insurance matters is useful and is the type of initiative which should be encouraged and possibly rewarded by the industry.

The Board agrees there has been noticeable improvement on some fronts and a greater focus brought to communication and awareness which should help alleviate some of the pressures experienced in the last hard market. However, these initiatives appear somewhat ad-hoc and afford little insight into how they might apply in a small, vulnerable insurance market like Newfoundland and Labrador. In addition, while automobile, homeowners and, to some degree, commercial insurance are not experiencing availability and accessibility problems currently, there are weaknesses in other specific areas, notably the voluntary sector, where existing insurance problems will only become exacerbated in the next hard market. For example, Ms. Rowe of the Community Services Council noted a series of education modules on IBC's website which, while useful in addressing items like risk management, still does not speak to insurance needs and practical ways of becoming a better consumer. Ms. Rowe pointed to things like reducing the size of boards and increasing deductibles as educational issues for the voluntary sector that need to be properly communicated. It was also suggested that IBC may not be representative of the entire insurance market in this Province and that possibly an outreach education initiative may prove a more effective solution for the voluntary sector in Newfoundland and Labrador.

The Board's concern at the present time is whether this patchwork of ideas and concepts if left alone will materialize into bridging the information and communication gaps identified during the review. The Board acknowledges the work of the Atlantic Task Force but it is not clear that the follow-up process from that exercise will adequately address issues in this Province. The importance of improving education and communications between consumers and the insurance industry as a means of exerting a positive and necessary influence on the provincial marketplace in years to come is paramount. While the information requirements and access mechanisms may be different for different types of insurance, the need, motivation and goals behind improving communication and awareness relating to individual insurance products is not. The Board is of the view that a proactive and on-going monitoring of this issue is more appropriate than allowing the current situation to simply evolve. This examination would be focused on working with stakeholders to utilize existing tools (either national, regional or provincial in scope), evaluate the applicability of these tools in the provincial context and determine what, if any, further initiatives may be justified to better respond to local issues. Again, Ms. Rowe of the Community Services Council indicated that an education initiative as the top priority for the voluntary sector may not be appropriate unless considered in concert with other important insurance issues facing that sector. This collaborative approach should be pursued in recognition of the cyclical nature of the insurance industry and the clearly different circumstances which will challenge all stakeholders in an impending hard market. This examination may constitute part of the work to be initiated in respect of the implementation framework discussed in Section 7.0.

6.5. Homeowners Insurance

6.5.1 Downtown St. John's

The availability issues associated with downtown St. John's appear to have been addressed by IBAN's voluntary program for hard to place risks. IBAN has proposed to formalize and expand this program to other hard to place risks to increase access to homeowners insurance for all consumers in the Province. IBAN also plans to implement a report mechanism to track information such as the reasons why the risk was declined, the declining companies, assigned companies, and the premium. This information will be helpful to IBAN and the Superintendent of Insurance in monitoring the status of the homeowners market in the Province in terms of availability and also in evaluating the overall success of the program. IBAN is to be commended for its initiative with respect to this program, which has clearly benefited homeowners in downtown St. John's, and its commitment to expand the program to homeowners in the Province.

The refurbishment of downtown St. John's is, according to industry representatives, also having a positive impact on the availability of insurance as more insurers are now interested in writing business in that area. However there are still measures which could be considered which may increase the availability of insurance in the downtown area and in the Province as outlined by the Consumer Advocate:

- Insurers not currently participating in the downtown St. John's market could voluntarily agree to make a commitment to the downtown and increase their presence in the market. This commitment could be measured by a reporting process.
- The IBC and IBAN could possibly assist the situation by working together to improve broker access to these companies, some of which may be IBC members.

- Availability could be improved by making the market more attractive to insurers or to mitigate those circumstances, which make it less attractive than other areas. Some examples include dealing with irresponsible landlords, stricter by-laws with improved enforcement mechanisms, and education of industry by the City of St. John's as to steps taken to improve adjacency and other risk concerns in the downtown.

A number of other possible solutions were suggested by industry for improving access to insurance options for homeowners in downtown St. John's. These included:

- Compliance with National Building Code;
- Improved enforcement mechanisms to deal with landlords who do not maintain their properties in a safe and well-kept manner;
- Improving adjacency concerns through requiring firewalls between properties;
- Enforcement of municipal by-laws to ensure upgrades are completed and safety is not compromised; and
- Education of consumers on the importance of proper maintenance and the impact of adjacent properties with maintenance and/or occupancy problems.

It was suggested that addressing these issues would increase the attractiveness of the downtown area to insurers and encourage more insurers to write in this market. This increased competition may result in improved availability and affordability of insurance for homeowners.

The Board held a meeting with representatives of the City of St. John's to discuss the role that the city plays in terms of the above. Ms. L. Bishop, Senior Legal Council with the City, stated that: *"…while it's clearly in the interest of both the insurance industry and the City that properties are well maintained and kept in good shape, sometimes we find that what we require from a code perspective differs from what is required by an insurance company for a property owner to obtain insurance."* Mr. D. Blackmore, the Director of Building and Property Management, described the various national standards codes that have been adopted by the City. While these codes set out specific standards with respect to building construction, fire, electrical and life safety, the codes also recognize that many of the buildings in use do not meet these standards. The code requirements would not be applied to existing buildings unless they are undergoing major renovation; however the City does have minimum standards which it enforces. The fact is that many older buildings and homes in the City and, in particular, in the downtown area, do not meet national code requirements and are not required to. If insurers are using these code requirements in assessing risk and assigning premiums then there may be issues around the availability and cost of insurance, depending on the individual property.

Another factor identified by the City in terms of its ability to deal with some of these issues was the limited powers that the City has under the *City of St. John's Act*. While the City has an active inspection and enforcement program and regularly issues notices on maintenance matters and tickets for by-law violations, many of these violations end up in the courts resulting in delays in action. It was suggested that more modern, up-to-date legislation for the City such as that in place in Halifax or Calgary would enable greater autonomy regarding enforcement. City representatives also suggested that a closer interaction between the City and the insurance providers might be beneficial in terms of being able better understand and remedy some of the outstanding issues.

6.5.2 Oil Tanks

While the insurance industry supports the new legislated standards with respect to oil tanks in the Province there were several issues raised relating to this issue that may require intervention or action by Government. The issue that received the most attention was the possibility that homeowners may have problems with their insurance if their oil tanks have not been registered as of March 31, 2007 as required by the legislation. Other issues raised concerned the design of oil tanks and the extent to which this contributed to the high incidence of oil spills in the Province.

Concern was expressed by both the Consumer Advocate and industry representatives regarding the pending deadline of March 31, 2007 for registration of oil tanks by homeowners. In particular the Consumer Advocate suggested that:

> "*If by the deadline homeowners have not registered and complied with the legislation, homeowners may face difficulties in finding and keeping their insurance coverage in place. Given the large number of tanks, the limited number of inspectors and the looming deadline, this issue deserves prompt action.*"

It was not clear whether many homeowners in the Province with oil tanks are actually aware of the pending deadline and the impacts of not meeting this deadline.

This issue has the potential to create significant accessibility concerns for homeowners insurance if homeowners who currently have policies with an insurer are faced with the prospect of having their policies not renewed because of a non-registered oil tank system. As well the legislation as written prohibits fuel suppliers from dispensing home heating fuel into an unregistered tank after March 31, 2007. While insurers have indicated that they are willing to look at individual circumstances and allow a reasonable time for upgrades and replacements of existing tanks as required to meet the new legislated standards, some homeowners may find themselves without heating fuel after March 31, 2007 if they do not have their tanks registered.

Government may wish to consider providing for an enhanced education campaign to increase awareness of homeowners with respect to this legislated requirement. This could be put in place in conjunction with insurers in the Province. Insurers have a vested interest in seeing this registration requirement is implemented fully as it may reduce their risk exposure and mitigate losses in the future. The fuel supply companies may also be in an ideal position to distribute information and to assist with raising consumer awareness of the registration requirements as they are in direct contact with customers a number of times each year. Time may also be a factor if in fact there are insufficient resources in place to have the inspections and necessary remediation work completed in time for homeowners to meet the deadline for registration. Homeowners may also delay registering their tanks if the costs to undertake the necessary work are high, which could add to the problem as the deadline approaches.

It is noted that Government's press release issued in connection with the introduction of regulations for registration of domestic oil tanks specifically stated that:

> *"The fuel supply and insurance industries will be responsible for inspection and enforcement. If a domestic fuel supply system does not meet the new regulations, the fuel company will not delivery oil and the insurance industry will not offer coverage. Government will maintain a register of all fuel system. If necessary, government will also be responsible for legal action."*[30]

The Consumer Advocate has also questioned whether the design of oil tanks in use in this Province may be contributing to the high rate of tank failures in the Province. According to one source 70% of the outside tank failures in Newfoundland and Labrador from 1996-2000 were the result of tank corrosion. While 14 gauge tanks are permitted Government recommends the use of thicker 12 gauge tanks, which have a longer life. As well the Consumer Advocate suggested that end-outlet tanks may also be contributing to the corrosion problem and suggested that consideration be given to requiring bottom-outlet tanks in Newfoundland and Labrador.

The following suggestions were put forward by the Consumer Advocate:

- Advise consumers in their insurance renewal notices or otherwise of the discounts that may be available for tanks with enhanced design and construction characteristics.
- Require bottom-outlet tanks to be installed for all new and replacement tank installations.
- Mandate the installation of a weather protection device over the fuel line of outside tanks. This device is mandatory in PEI for all existing and new oil tanks installations.

6.5.3 Mandated Repairs and Renovations

The Consumer Advocate observed that the NSIRB noted this concern was not so much an issue of training or lack of training of insurance company inspectors, but rather the underwriting criteria imposed by insurers. The NSIRB found these criteria varied and recommended that insurers further educate their inspectors through courses and technical colleges. The Consumer Advocate argued this recommendation does not go far enough and, in the event of a dispute over a mandated repair or renovation, the insured should be provided with the written criteria or standard being applied by the insurer, along with a reason why an alternative proposed by the insured may not be acceptable. The Consumer Advocate felt such a process would be more transparent and pointed to a reform in Texas where a Consumer Bill of Rights provides for an independent inspection. Under this provision, should the inspected property meet minimum standards, coverage may not be then be denied without a re-inspection and written justification.

The Consumer Advocate noted during the roundtable discussion on homeowners insurance that his primary concern was not so much the timeline to have the work completed but whether or not the mandated repair or renovation is warranted in the first place. One insurer representative responded:

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[30] Fact Sheet Government's Response to Recommendations of the Domestic Fuel Oil Spill Prevention Committee, issued in conjunction with January 28, 2002 press release.

> *"Not all companies are going to write the same risks. And if you think that by having a provincially licensed inspector saying that everything is fit and to mandate companies to write that risk, that's not going to happen. Companies write different risks. They have different appetites for risks. They charge different rates for risk and that's the -- I think that's the underpinning of a competitive marketplace."*

There was a consensus among industry participants that there have been insufficient complaints either through the Superintendent's office or other demonstrable sources to justify the action being proposed by the Consumer Advocate.

The Consumer Advocate acknowledged that:

> *"Even though there might be very few cases, maybe the mechanism wouldn't have to be used that much, but it would be there. Someone could say, look, as opposed to calling up the superintendent and giving them the story, he could say 'look, we've got an inspector. If you're right, you right. If you're wrong, you're wrong. But here is a process. It's objective. It's knowable in advance. Here it is.' And if someone says 'well, I'm not interested in that, well that's fine. You had your chance and you're going to have to live with the decision that your insurance company has made."*

6.5.4 Replacement Value Coverage

In his written submission the Consumer Advocate stated that for those insureds who are not compelled by their bank or other mortgage provider to insure to the full replacement value of the dwelling, and who do not desire such extensive coverage, presumably less coverage would be less expensive. The Consumer Advocate suggested that affordability would be enhanced if insurers offered lower cost products with more limited coverage, such as a product that allows homes to be insured for market value and claims being settled on actual cash value basis. It was acknowledged that such choice of product does have the potential to create confusion if not properly communicated to consumers and may also lead to disputes in the event of a loss.

IBAN noted that software is in place through third parties with construction expertise to reasonably valuate replacement value coverage. IBAN also indicated that Actual Cash Value policies are also available in the marketplace and are discussed as a matter of course to help solve client problems.

6.5.5 Effect of Fire Protection Levels

In response to questions from the Board IBC advised that there has been no identified change in the level of fire protection in communities across the Province. IBAN stated that if fire protection levels or standards decrease in certain areas it will likely affect future rates for homeowners coverage. According to IBAN Government should work with the various municipalities and educate consumers as to the importance of maintaining proper fire protection services.

6.5.6 Board Comments

While concerns with availability in downtown St. John's appear to have been addressed there were a number of additional options identified which may help increase the availability of insurance in the downtown area in the future. Consideration of these options will require further discussion with insurers and brokers, and also the City of St. John's. The need for increased consumer awareness and education about the importance of proper maintenance of their properties was also highlighted. This information could be incorporated into ongoing or new consumer awareness initiatives that may be implemented as part of any consideration of the consumer assistance or consumer awareness options discussed previously.

The Board notes that the issues raised by the industry and the Consumer Advocate with respect to the pending registration deadline for domestic fuel supplies could result in insurance problems and a disruption of fuel oil supply for homeowners as of March 31, 2007 if oil tanks have not been inspected and registered.

Options to address the additional concerns raised with respect to mandated repairs and renovations for homeowners insurance are considered as part of the discussion of consumer protection mechanisms in Section 6.2. The issue concerning replacement value coverage would benefit from a greater choice of product coverage that is explicitly made known to consumers. There is a direct and important relationship between fire protection and insurance costs that should be promoted as a key message to consumers and municipalities. The Mayor of a small community whose fire department is struggling financially and requires $35,000 over the next two years to survive stated in a recent CBC news story: *"...people should know that, without a local fire department, insurance costs for homeowners could increase dramatically."*[31]

6.6 Commercial Insurance

6.6.1. Risk Management

The role of risk management in assisting commercial insureds, including the voluntary sector, was a recurring theme during this review. Implementation of an effective risk management program was suggested by many stakeholders as one of the most positive steps that a business or organization could take to improve its own insurance risk profile and potentially increase its insurance buying options. According to the Atlantic Task Force Report:

> *"A thorough and thoughtful risk management plan is part of the insurance customer's commitment to prevent harm and reduce losses but it is just one part. An effective risk management strategy ensures that an organization has identified and understands the risks to which it is exposed and has created and implemented an effective plan to prevent losses or reduce their impact if they occur."*

In addressing this issue the Atlantic Task Force Report recognized a responsibility for both insurers and consumers in implementing effective risk management practices.

[31] CBC, website: http://www.cbc.ca/nl/story/print/nf-fire-department-20060418, [accessed April 18, 2006]

Recommendation #3 stated:

> *"The insurance industry should promote and recognize risk management practices by:*
> - *Increasing the knowledge of risk management among commercial insurance consumers;*
> - *Facilitating implementation of risk management practices, using the Task Force's developed risk management education tools; and*
> - *Ensuring that insurance companies acknowledge good risk management practices."*

Recommendation #22 of the Atlantic Task Force Report stated:

> *"Consumers should review risk management information available to them. They should consider implementing a comprehensive risk management strategy that will help reduce or eliminate loss. It simply makes good business sense."*

The importance of risk management in reducing insurance costs and increasing availability was also recognized by a number of insurers in comments to the Board:

> *"A good risk management program will have a positive impact on the frequency and severity of claims which will in turn improve the claims results for client and the insurer. Claims results has an important bearing on an insurer's pricing structure…"*

> *"Claims are the largest source of insurer costs and, as costs influence pricing, any factor that reduces, or minimizes, claims costs will have a favourable impact upon premiums for a particular business or business sector. If it results in attractive levels of profitability, it may also increase availability by attracting new insurers into the market…"*

Several insurers noted that evidence of good risk management practices is necessary before agreeing to insure the risk in the first place. Also, if a company or organization has a good risk management program, options for shopping for insurance may also increase as insurers may compete for the business in terms or pricing and/or coverage.

Because commercial insurance is rated based on assessment of the individual risk characteristics of the business or organization, it is not possible to quantify what reduction in premiums an insured might experience with implementation of a formal risk management strategy. Indeed the fact that there did not appear to be a direct correlation between risk management and lower premiums was an issue raised by many stakeholders during the review. Mr. Craig Rowe of Canadian Risk Intervention described the benefits of risk management to the Board in this way:

> *"And what I try to tell the consumers about the benefits of risk management is that I use the example, the insurance market is cyclical, it goes up, it goes down, okay. And if you're in a particular, say, a high- risk industry, and this is not an unusual example, that over a course of like a three-year hard market your premiums increase, the range in the industry you're in of premium increases is 100 to 300 percent. If you practice good risk management, so if you practice risk management, and you have it formalized in documents and you communicate that effectively to your insurance company, then what's going to happen is that you're going to be considered best in class, so you are in that industry where if the average increase were between 100 percent and 300 percent, if you're best in class then that means you're going to get that 100 percent. So, and that's you know, that's an example where it would be huge savings, but the example is valid in all cases."*

While recognizing the need for risk management several stakeholders also spoke to the challenge of education and finding information on risk management tools and "best practices". This is particularly important for the voluntary sector in which groups and organizations often have no paid staff and are entirely dependent on the work of community-based volunteers, many of whom often have no expertise or knowledge in the area of insurance related risk. While the concept of risk management in and of itself is not complex, it would be unreasonable and perhaps unfair to expect a volunteer or group of volunteers to understand and recognize all the associated liabilities of their organization or group's activities. This becomes an even more important issue for those volunteers who sit on Boards of Directors.

In response to the Atlantic Task Force Report recommendations IBC has implemented a series of 'Risk Management Tools" on its website. These tools are designed to provide information to assist businesses and organizations to understand their risks and sets out a series of questions and worksheets that can be used in assessing risk and developing a program to manage those risks. Specific information is available for different types of businesses, for various activities, and also for the voluntary sector. These "tools" are written in clear, easy to understand language and should be helpful to those businesses or organizations that access them. While available on IBC's website it is not clear whether or not this information, or the fact that it is even available, is communicated to those businesses and groups who could benefit from it.

Another effective vehicle to promote risk management is through educational programs offered by sector organizations. These sector specific sessions would address the unique risks and liabilities associated with the programs, activities or services offered by the group. For example Hospitality Newfoundland and Labrador has initiated a series of training programs that are nationally certified and recognized for the lounge industry, targeted at reducing risks associated with businesses that serve alcohol. These types of dedicated training and education initiatives have the potential to provide lasting benefits to the sector's insurance premiums if they result in fewer claims and hence lower insurance costs. It is important to recognize however that the results of such initiatives won't be felt immediately in the form of lower rates; however, the existence of such programs may increase availability of insurance because of the lower risk exposure.

Mr. Cook also described the efforts undertaken by the Canadian Tourism Commission to address insurance issues faced by the outdoor tourism industry nationally. As a result of a collaborative effort of stakeholders across the country a series of insurance guides has been developed to assist the sector. *"Insurance Tutorials for Outdoor Tourism Businesses"* is intended *"to provide a basic understanding of insurance as it related to operating an outdoor tourism business."* A second guide *"Risk Management and Insurance Guide for the Adventure, Ecotourism and Alpine Skiing Industries*" offers best practices for managing risk in the sector.

The Council of Tourism Associations of British Columbia (COTA) program in British Columbia described in Section 6.6.2 is an example of an insurance solution that integrates risk management practices with the insurance purchasing process. For an initial fee a prospective client is able to access a risk management consultant to assist with identifying risks and putting in a place a risk management strategy. According to Mr. Cook this program will be available in Newfoundland

and Labrador in 2006 and should result in lower premiums than would otherwise be available in the regular market.

As stated previously, one of the consequences of the last hard market is that many insureds have become more aware of the impact of their activities and actions on their insurance risks. This awareness has come about primarily as businesses and organizations have sought ways to reduce their overall insurance costs in light of significant premium increases. This awareness and the increased focus on education and training to assess and reduce risks associated with their operations must be sustained however in order for the potential positive impacts of risk management strategies and reduced losses to be carried forward into the next hard market.

6.6.2 Alternatives to Traditional Insurance

As stated in the Atlantic Task Force Report, in the recent hard market consumers were not able to access some existing insurance products that might have helped them to buy insurance at a more affordable price. For example there are specialty programs and markets offered by insurers in Canada that are designed for specific risks or targeted at certain sectors of the insurance market. Some commercial sectors have also been successful in implementing alternatives to traditional insurance purchasing by accessing or implementing a custom solution to fit their own needs. These alternatives include self-insurance, captive insurance companies, reciprocal insurance exchanges, and group insurance purchasing. In some jurisdictions government has stepped in to support insurance programs for certain sectors and groups.

These alternatives to traditional insurance are described below.

Specialty Market Programs

A specialty market program provides insurance coverage to a targeted market segment. These programs are usually offered directly by a general agent that specializes in markets that have difficulty finding insurance. In many cases these sectors or groups may have difficulty accessing the regular insurance market for the types of coverage required because of the type of risk. General agents work with an insurer and/or broker to develop programs to insure these risks. Insurers often get involved as part of an overall business strategy to target certain sectors (e.g. sports and recreation, tourism, and non-profits). In some cases the specialty program has been developed in conjunction with the interested sector, or in other cases the program is developed in-house and marketed directly through the company's agency or broker network.

One example of a specialty program developed in conjunction with an umbrella organization is the Directors and Officers Liability Insurance Program developed in conjunction with Volunteer Canada. This program is underwritten by ENCON and offered through Aon Reed Stenhouse and is available to voluntary groups across the country.[32]

[32] Board Volunteering: National Directors' and Officers' Liability Insurance, http://www.volunteer.ca/volcan/eng/content/board/program.php, [accessed online February 15, 2006].

Another specialty program implemented in BC serves the insurance needs of the adventure tourism sector. COTA and Adventure Insurance Agency have partnered to provide liability insurance to companies operating nature-based tourism experiences under the COTA Insurance and Risk Management Program. Under this program businesses identified as having risk management plans and operating procedures in place could qualify for premium reductions. Businesses pay an annual subscriber fee of $200 for exclusive access to the COTA Risk Management Insurance Handbook, regular risk management updates, a sample risk management plan, standard operating guidelines, tailor-made applications, customized waivers, risk management audits and a review of their insurance application by tourism risk management experts Pinnacle Risk and Insurance Consultants.[33] The list of eligible activities is comprehensive and ranges from all types of skiing, snowboarding, kayaking, rafting, biking, caving, wall climbing, rock climbing, mountaineering, ATV operations, fishing tours, and surfing. The application process can be completed online. According to the Atlantic Task Force Report this program is the first of its kind in Canada. Hospitality Newfoundland and Labrador reported that this program will be available to interested businesses in this Province as of this year.

Since most of these specialty markets are based outside of the Province access to these programs depends whether the consumers' broker or agent has knowledge of or access to the programs. As noted in the background report to the Atlantic Task Force Report, many local brokers do not have agency relationships for programs developed by brokers elsewhere. In addition many do not have sufficient numbers of prospective clients with similar needs to make such arrangements worthwhile. The Atlantic Task Force recognized that the industry has a role to play in increasing the awareness of these specialty markets and making them more universally available. The Task Force recommended that the industry create a method for brokers to have more resources available in order to find insurers for specialty insurance risks.

Alternative Risk Transfer Mechanisms

Alternative methods for purchasing insurance are generally called alternative risk transfer methods, which use non-traditional methods to finance an organization's property and liability losses. An increase in the use of alternative risk transfer vehicles was a response to the liability insurance crisis in the mid 1980s, especially in the United States. It was expected that by 2003 50% of the commercial market would be insured through the global alternate risk transfer market. Risk transfer methods such as self-insurance, pools and risk retention groups are for the most part a United States concept. Captive insurance companies are a global phenomenon. In Canada the emphasis has been on the formation of reciprocal insurance exchanges, which have been increasing in numbers since the 1980s in Canada.[34]

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[33] COTA Brochure, www.cotabc.com.

[34] Canadian Tourism Commission, Insurance Issues and Alternatives in the Outdoor Tourism Sector in Canada, August 28, 2003, pg. 21.

Some of types of alternative risk transfer mechanisms are summarized below:

Self-insurance
An organization or group may choose to self-insure by assuming all risks and losses entirely and/or purchasing insurance to cover catastrophic losses only. Self-insurance requires that the organization or group have the financial ability to cover losses that are not insured. The use of self-insurance may increase insurability if the organization self-insures the riskier aspects of its business or activities. The regular market can then provide the additional required insurance, presumably for a lower premium since the risk exposure is less.

Captive insurance companies
A captive insurance company is owned and operated by the corporation, organization or group it insures and is considered to be a subsidiary of the parent company. Captives are subject to legislation in the operating jurisdiction where captives are permitted. Few provinces in Canada have captive legislation.

Risk Retention Groups
A risk retention group is a liability insurance company owned by its members, who are usually engaged in the same or similar activities. The members assume and spread the liability risk exposure of the group members. Groups are usually organized as mutuals, stock companies, cooperative insurance companies, or inter-insurance associations (also known as reciprocals). Group members provide the capital to start the company and the group retains the risk.

Reciprocal Insurance Exchanges
This is a type of risk retention group and also a form of self-insurance. A reciprocal is an unincorporated non-profit group or pool of organizations that contract with each other to spread the risks and losses inherent to their activity. (Canadian Tourism Commission Study, pg. 24) These exchanges operate similar to an insurance company in that it issues policies, collects premiums and pays claims. Profits and losses are distributed to or absorbed by the members of the pool in proportion to their participation in the pool. There are several examples of reciprocal insurance exchanges in Canada, including the Municipal Insurance Association of BC, Alberta Local Authorities' Reciprocal Exchange, Healthcare Insurance Reciprocal of Canada, Ontario Municipal Insurance Exchange (OMEX), Ontario School Board Insurance Exchange, The Canadian Petroleum Insurance Exchange (CPIX), the Community Newspapers Reciprocal Insurance Exchange (CNRIE), and The Canadian Universities Reciprocal Insurance Exchange (CURIE).

Group Insurance Purchasing
This is a group of insurance buyers that join together, usually on a national basis, to purchase insurance. Group insurance purchasing transfers the risk to the insurers that write the policies for the group members, and is also referred to as risk purchasing. Some groups purchase directly from an insurer while others may purchase through a broker or agent. In some cases a master insurance policy is issued for the group with certificates issued for each group member. Participation can be voluntary or mandatory. Group insurance purchasing is used widely in Canada mainly through various professional associations, or national organizations. The group, the broker or the insurer can manage the program.

Establishment of many of these alternatives to traditional insurance purchasing was usually in response to a particular circumstance or crisis or to fill a gap in insurance coverage that was not available in the regular insurance market. As an example, on their website[35] the Canadian Universities Reciprocal Insurance Exchange (CURIE) indicated that this reciprocal was created "*in response to major concerns in commercial insurance coverage for universities during the 1980s. Premiums rose dramatically and coverage on bodily injury risks was steadily reduced despite management practices that kept annual claims significantly below the premium paid."* The document goes on to explain the factors that led to this situation, including insurers' reaction to court decisions and the fluctuation in property and casualty insurance rates between extreme highs and lows in seven to nine year cycles. As the liability rates per student increased more university activities became uninsurable. In 1988 42 Canadian universities started pooling and collectively insuring their property, liability and errors and omissions risks through a new insurance entity CURIE.

The Nonprofits' Insurance Alliance of California (NIAC) is an example of a risk retention group that was formed following the hard insurance market of the late 80s which resulted in limited availability of insurance and soaring premium costs for non-profit organizations. The NIAC is *"a liability pool which was established in 1989 exclusively for 501(c)(3) tax-exempt non-profit organizations in California. NIAC provides a stable source of reasonably priced liability insurance coverages tailored to the specialized needs of the non-profit sector. NIAC also assists these organizations to develop and implement effective loss control and risk management programs."*[36] NIAC currently has annual premiums in excess of $42 million and has more than 5,000 member-insureds.[37] As a result of the success of NIAC in California the Alliance of Nonprofits for Insurance Risk Retention Group has been established to serve the needs of nonprofits in other States.

These types of alternative insurance solutions may represent a potential solution to some of the challenges and concerns put forth by commercial insurance consumers. Indeed the challenges of the recent hard market have resulted in several new or expanded reciprocal insurance exchanges in Canada. A recent article in Canadian Underwriter[38] stated:

> *"Municipalities across Nunavut (as well as the Northwest Territories) have their own reciprocal, as do roofing contractors in British Columbia and Alberta. Registered real estate agents in Saskatchewan and Alberta can now get insurance coverage through an expanded entity known as the Real Estate Insurance Exchange. Groups as diverse as the voluntary sector, building inspectors and municipal governments in Atlantic Canada are reportedly looking into setting up reciprocals to provide insurance that is more stable than the mainstream market."*

It is noted that the Atlantic Task Force recommended that the insurance industry assist organizations that express interest in finding non-traditional purchase options.

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35 www.curie.org/doc/curie-www-128.htm, [accessed online March 21, 2006]
36 Wolfgang Uebel/BizNext, Improving the Insurance and Public Policy Environment for Non-Profit and Voluntary Organizations In Atlantic Canada, October 2005, pg. 55.
37 About NIAC, http://www.niac.org, [accessed online April 3, 2006].
38 Craig Harris, Reciprocal Resurgence - Canada's Quiet Contribution to Alternative Risk, Canadian Underwriter, September 2005.

While these alternative risk transfer mechanisms do present alternatives to traditional insurance there are several factors that make these options impractical for many businesses and organizations in Newfoundland and Labrador in addressing concerns of affordability and accessibility for commercial liability insurance. These include insufficient numbers of companies or organizations with similar risks to be able to pool resources or take advantage of group purchasing and a lack of knowledge, expertise and resources necessary to be able to undertake the task of setting up an alternative risk transfer mechanism. Some of these options may be viable for businesses and organizations that may be able to link with similar businesses or organizations regionally or nationally. Education and awareness is an issue that needs to be addressed. As noted in the Atlantic Task Force report: *"Opportunities already exist to create group policies for businesses or other organizations with similar risk profiles. However, these solutions are not offered by all insurers and are not available through all agents or brokers and consumers often do not know they exist."*

The Board was also asked to examine whether risk sharing pools present an option for addressing the issues raised with respect to homeowners and commercial insurance. A risk sharing pool essentially is a mechanism where members cede risks they are unwilling to take on their own book and agree to share the pooled results. Insurance companies may participate in a number of risk sharing pools to spread their own risks and reduce exposure. Facility Association is an example of a risk sharing pool where high-risk drivers unable to obtain automobile insurance in the regular market are insured through Facility Association. Legislation requires all automobile insurance companies in the Province participate in this risk sharing pool. Similar pools exist in other provinces as well where automobile insurance is provided by the private sector. There are specific rules in place under the *Insurance Companies Act* for the operation of Facility Association in this Province.

While there are numerous types of risk sharing pools, there are basically two methods of funding. In the first, the cost of insurance is based on the actual loss experience of the pool of insureds, which means that if the loss experience is worse than average, rates will be higher than the regular market. Sharing of results is based on the percentage of the total regular market written by the insurer. This is the funding mechanism in place for Facility Association. In the second, the insurer cedes the risk to the pool at its regular market rates and shares in the results of the pool in proportion to the amount of business it cedes.

Groups or organizations can also establish risk sharing pools, such as the risk retention or reciprocal groups described previously, where they are engaged in substantially the same type of activities and share the same type of risk exposures. As indicated these groups or organizations must be willing to assume the risk of all the members of the pool and be able to contribute to the pool to cover expenses and claims. Premiums are based on the claims experience of the group itself, which may be an incentive for good risk management programs for pool members.

In order for a risk sharing pool to function properly there must be a significant number of similar risks such as in the case of automobile insurance. If the pool is structured in such a manner that it is required to take all risks that are not able to be placed in the regular market, the premiums for this group will likely be substantially higher, due to the higher risks. Thus, while a risk sharing pool may improve accessibility to insurance it would not necessarily address affordability issues. As well, in the case of commercial insurance in particular, the variance in the type of risks and the different exposures combined with the low number of commercial risks insured in this Province does not lend itself well to the establishment of a risk sharing pool similar to automobile insurance.

6.6.3 Government Support for Insurance Consumers

In some jurisdictions government, both provincial and municipal, has stepped in to take responsibility for some of the insurance costs for specific groups of insurance consumers. The following examples were outlined in the Atlantic Task Force report and are instructive as to how this type of intervention can assist groups with their insurance needs:

> Nova Scotia Trail Groups program
> The Government of Nova Scotia provides Nova Scotia Trails with $5 million in general liability insurance protection for any claim or loss. The Nova Scotia government covers the risk up to $1 million while Lombard Insurance Canada covers the additional costs if there is a claim or the annual cost exceeds $1 million. Participating trails associations pay premiums, contributing about $39,000 to operate the program. The cost of paying small claims and buying insurance for claims above $1 million is expected to be about $126,000 annually. The program is available to all community trail groups who are members of Nova Scotia Trails and who manage trails under agreements with public/private landowners. The plan is also available to the Snowmobilers Association of Nova Scotia and its member clubs.
>
> British Columbia's Master Insurance Program
> This program is supported by the Government of British Columbia and covers the cost of liability insurance for voluntary sector organizations that are delivering services on behalf of the province.
>
> Jubilee Insurance Agencies
> Owned by the Alberta Association of Municipal Districts and Counties, this program provides Alberta municipal jurisdictions (and other voluntary sector organizations) access to "reasonably priced and comprehensive insurance protection."
>
> Quebec
> The Quebec government supports a Directors' and Officers' Liability program for provincial sports and recreation associations, administered by the Regroupement Loisir Quebec.

These types of programs supported by Government assist the respective organizations and groups with their insurance needs by reducing overall insurance premiums. Most programs seem to be targeted at voluntary groups that are undertaking work on behalf of Government. A similar program in this Province targeted at the voluntary sector, or certain groups within that sector, may present an opportunity for Government to assist these groups in delivering necessary services without the liability exposure associated with inadequate or no insurance.

6.6.4 Board Comments

As a result of the last hard market many commercial insurance consumers have recognized the importance of risk management as a tool in reducing the risks associated with their business or organization's activities. The report highlights a number of examples of excellent initiatives to increase awareness of risk management practices being undertaken by business and interest groups. In the Board's view implementation of effective risk management practices presents the best opportunity for commercial insurance consumers to contain or reduce their overall insurance costs. Ongoing initiatives in this area are important and should be supported and maintained by all stakeholders.

The Board heard that the existing market has softened and, while premiums are still high, many insureds are experiencing no increases and in some cases decreases in premiums. The "sense of urgency" that may have been driving the need for approaches to reduce premiums may have waned somewhat. However, it is even more important that companies and organizations implement risk management strategies at the earliest opportunity so as to be prepared when the next hard market begins.

Increased awareness and information among brokers in the local market about existing programs and specialty markets that may be available to address insurance needs of specific sectors, such as the hospitality/tourism or voluntary sectors, should also be encouraged. The recommendation of the Atlantic Task Force that industry create a method for brokers to have more resources available in order to find insurers for specialty insurance risks should be pursued by industry as this initiative may result in increased availability of insurance products for these sectors.

Other than group purchasing the other options discussed, including the establishment of risk sharing pools, do not appear to present an immediate solution for many of the small businesses and organizations that expressed concerns about insurance pricing and availability during this review. Consideration can also be given to whether a Government supported insurance program for certain groups, such as the voluntary sector, as has been implemented in some other jurisdictions, should be established.

6.7. Voluntary Sector Challenges

It was recognized by a number of stakeholders that the voluntary sector requires special consideration in terms of seeking solutions to address their specific concerns. This consideration should involve the sector itself as well as Government and the insurance/broker community. The importance of addressing the insurance challenges facing the voluntary sector was referenced by the Consumer Advocate in his written submission:

> *"The Consumer Advocate is very concerned about the state of the insurance situation as it relates to the Non-Profit and Voluntary Sector in Newfoundland and Labrador. There are considerable pubic policy implications that arise where groups who do so much to enrich the lives of our citizens and in many cases carry out vital social and community functions are under threat due to insurance concerns.*
>
> *It is not an exaggeration in the least to say that the high cost of insurance is threatening the very existence of many of these organizations in this province. If the sector is not provided the means to help mitigate the impacts of the next hard market the consequences will be profound."*

IBC also acknowledged the important role of the voluntary sector in building and supporting communities and recognized that the cost of insurance is a significant issue for the sector. In its final submission IBC referenced several factors that have had an impact on the cost of liability insurance in general, and the sector in particular[39]:

- Court rulings have vastly increased the scope of legal liability to which the volunteer sector is exposed.
- There have been increases in legal liabilities of Board of Directors for all commercial enterprises, including not-for-profits.
- The scope and duty to defend these exposures have increased for insurers.

Because there are more lawsuits and because more of these lawsuits are impacting the voluntary sector and its Boards, IBC has concluded that the liability insurance problems faced by the voluntary sector are not related to the cyclical nature of the insurance industry. The extension to this is that the reduction in premiums that many other commercial organizations may benefit from in a soft market may not be available to the voluntary sector. IBC stated:

> *"This is an important public policy issue for Canadians and we welcome the opportunity to participate in discussions to find solutions for this problem. We continue to work with representatives from the sector to assist in mitigating some of these issues."*

In addition to the other possible solutions discussed in this report with respect to the commercial insurance issues raised, there were several additional suggestions identified for the voluntary sector during the review. Many of these suggestions build on the work and recommendations of the Atlantic Task Force with respect to the voluntary sector. These are discussed further below.

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[39] IBC commissioned research from the University of Western Ontario Law School to determine what changes have occurred to procedural, legislative and case law that impacted on the cost of liability insurance in Canada over the past decade. The implications of the findings of this study "The Impact of Recent Developments on Liability Insurance" are discussed further in Section 6.9.2 Legislation Reform.

6.7.1 Education and Outreach

The Atlantic Task Force Report recommended a regional approach to addressing the need for education and outreach to the voluntary sector. In Recommendation #17 the Task Force recommended:

> *"The four provincial governments, in partnership with the insurance industry and the voluntary sector, should establish a joint process to provide independent information and advice to voluntary organizations to help them better understand the nature and type of insurance suited to their needs at the best possible price. Information should be available about sound risk management practices and practical methods to contain costs."*

The Consumer Advocate suggested that a two-pronged approach be adopted whereby a working group with representation from the voluntary sector, government and insurance and broker industries be established to deal with particular insurance needs and issues. The second prong would involve an education and outreach program specifically directed at the voluntary sector to address issues of risk management, insurance buying tips, and such other areas as identified by the sector where education is required.

Ms. Penny Rowe of the Community Services Council supported this type of collaborative approach. During a presentation to the Board Ms. Rowe stated:

> *"My vision would be that we would have maybe a committee which would comprise people from government, from the sector with financial support and information and knowledge coming from the insurance industry, as well so that when a question is put, the best information is given."*

Ms. Rowe went on to comment:

> *"…if we could get this collective committee with each of the three partners indicating that they're willing to look at this, then you have a slightly different situation, I think, where there's a little bit of willingness being stated that this is not just blowing in the wind, but rather that we're looking for some of the solutions."*

The establishment of a working group as envisioned by the Consumer Advocate would appear to be in line with the recommendations of the Atlantic Task Force recommendations and is clearly supported by both the sector and the industry. This approach may present an opportunity for a collaborative effort which could be implemented quickly and allow for some actions to be taken in the near term. These actions in conjunction with the consumer education and assistance mechanisms discussed previously may help to address many of the issues raised by the sector, and in particular with respect to the information gap that appears to exist between the sector and the industry.

6.7.2 Funding Support

Affordability of insurance is related to ability to pay, which for the voluntary sector is directly related to availability of funding. While the increases in commercial insurance premiums have affected many businesses, the voluntary sector is especially affected because of the manner in which many of the groups and organizations are funded. Most operate with limited funding, and in many cases the available funding is a function of the level of fundraising undertaken or the amount of fees charged for programs offered. Given that many of these voluntary organizations are offering programs for the most vulnerable of our society (children, seniors, disabled persons) the option of passing on higher insurance costs is often not an option or, at the very least, an undesirable one.

The Voluntary Sector Forum stated in a recent background report[40]:

> *"Voluntary sector organizations are particularly vulnerable to volatility of premiums because their financing mechanisms are not equipped to respond quickly to price changes. Most funding structures are notably non-responsive in this regard. Voluntary sector organizations also need to explore alternative ways to finance their costs of risk if the commercial insurance market does not sustainably meet their needs."*

The Board heard several comments about the frustration experienced by voluntary groups who have to spend more and more of their time fundraising to buy insurance. This issue is particularly acute for those organizations which receive no funding and rely solely on fundraising to cover operating expenses. One respondent to a Community Services Council survey stated:

> *"Basically the cost of insurance means extra fundraising for many organizations and this is often on the back of our kids. Kids can no longer sign up to be involved in any organization without having to commit first to becoming a salesperson. The sign-up fees are increasing each year and so are the number of required fundraisers."*

If the level of funding or the results of fundraising efforts is not sufficient to buy the necessary insurances the options for most voluntary organizations are to operate without insurance, purchase limited or inadequate insurance, or to not offer the programs at all. This is a critical issue since the choice is essentially to operate with no or inadequate insurance, leaving the volunteers and staff exposed to liabilities and risk, or to not operate, leaving the clients and the communities in which the organizations are based without these valuable services.

The Community Services Council's report on its recent survey findings noted the following[41]:

> *"There is evidence in the survey that increases in insurance premiums are creating stress among current volunteers struggling to raise the additional funds to cover rising costs. For example, one group said that some individuals, especially in rural Newfoundland where unemployment is high, might be unwilling to volunteer because they dislike having to ask for additional donations simply to cover the cost of insurance."*

[40] Voluntary Sector Forum, Addressing Liability Insurance Concerns of the Voluntary Sector, April 2005, pg. 2.
[41] Community Services Council, Insuring the Sector's Survival – Insurance and the Voluntary, Community-based Sector, March 2005, pg. 12.

In the same report (pg. 17) the Community Services Council recommended the following:

> *"For unfunded groups which deliver important programs to meet community needs, alternative approaches to providing coverage should be pursued. Perhaps the insurance industry could attribute a percentage (say, 1%) of their profits to support the non-profit and charitable sector. Or government and the community might search for other solutions to ensure that the voluntary sector is not made vulnerable"*

In a presentation to the Board Ms. Rowe stated:

> *"But, over time what's happening is there's less and less money being given to our organizations for administration. Sometimes you can write off your insurance costs to particular projects, but very more and more you can't do that. So, organizations have to find some other sources to pay for these core administrative costs or reduce those expenses. So, it's starting to pose a huge challenge.*
>
> *And I heard an incredibly telling example of an organization in central Newfoundland recently that is one of the star deliverers in this province, I mean, it's working in some communities that really needed the service of this—started with federal and provincial money, 100 percent funded. They've been in operation now for 10 years or 12 years. Their grant has stayed flat. All of their expenses have gone up. So, they have no choice but to go out and raise money to meet those basic operating expenses because there's no way they're going to reduce their program costs. So, the people in those communities are being asked to pay money for normal operating expenses for a program that's under the auspices, supposedly, a 100 percent funding from the Federal Government flowing through the Provincial Government. So, there's some issues we need to worry about there."*

The following options may present opportunities to address the issues associated with affordability of insurance for the voluntary sector by increasing the financial resources available to the sector to offset or cover these necessary costs:

- Government could provide indemnification for non-profit groups that provide services on behalf of government. This would mean that those groups currently purchasing liability insurance and which undertake programs on government's behalf would no longer have to purchase insurance or may only have to purchase over a certain threshold. (e.g. Nova Scotia Trails Association Program)

- Reduce or eliminate taxation on insurance products for this sector or, alternatively rebate the taxes collected back to the sector to offset insurance costs and/or to increase insurance education and awareness. This is a policy decision that could be seen as not being fair to other insureds but may be balanced against the societal benefits provided by the voluntary sector.

- Address the sector funding mechanism to provide for funding to cover insurance costs.

Any or all of these options may result in a smaller portion of the already limited funding resources being needed to cover insurance premium costs, and allow these funds to be redirected back into community based programs and activities. These options may also increase accessibility to liability insurance for those organizations that are currently uninsured or underinsured. In either case the goal of any option considered should be to ensure that the voluntary sector can continue to provide the necessary programs and services that play such a vital role in all communities in this Province.

6.7.3 Volunteer Protection Through Legislation

A number of the presenters from the voluntary sector, including the Community Services Council, suggested that the Province should consider enacting legislation to protect volunteers and voluntary, community based organizations from greater than necessary insurance premium costs, and to limit the liability of volunteers acting in good faith. The *Volunteer Protection Act* of Nova Scotia was proposed as a valuable model to investigate in addressing this issue.

The *Volunteer Protection Act, S.N. 2002, c.14, s.1* was proclaimed in Nova Scotia on May 30, 2002. The purpose of the legislation is to eliminate liability for volunteers of non-profit organizations for damages caused by an act or omission of the volunteer on behalf of the organization. Volunteers may include a director, officer, trustee or employee of the organization, as long as the volunteer does not receive compensation (other than reimbursement or allowance for expenses) for those services. Essentially, if the volunteer was acting within the scope of the volunteer's responsibilities in the non-profit organization and the legal requirements with respect to licensure, are met, the volunteer is not liable and cannot be personally sued. The legislation was amended on October 30, 2003 to provide further financial protection for volunteers who may be named in lawsuits. There are exceptions outlined in the *Volunteer Protection Act* under which volunteers may be held liable for their actions, including damages arising from wilful, reckless misconduct, or criminal offences. There is also an exception for a volunteer operating a motor vehicle on which he or she is required by law to maintain insurance at the time the damage occurred.

It is important to note that the *Volunteer Protection Act* does not protect the organization from liability for the damages to a person as a result of the actions of a volunteer acting on behalf of the organization where the volunteer is protected by the *Act*. The *Act* also does not protect employees of the voluntary organization.

The impact of the *Volunteer Protection Act* in addressing the insurance issues of the voluntary sector in Nova Scotia was examined by the NSIRB. The NSIRB reported that, based on discussions with insurers and volunteer groups, the *Act* has not made a difference to the premiums charged voluntary organizations for liability insurance. Furthermore individual volunteers who have sought legal counsel about the *Act* regarding their own liability have been advised to continue to obtain insurance since the *Act* has not been tested by the courts. This is also the position of the industry according to the NSIRB report.

In its report the Atlantic Task Force also considered the impact of volunteer protection legislation and stated that, although the provisions of the Nova Scotia legislation have not been tested by the courts, presumably individual volunteers in Nova Scotia now have greater protection that they had without the *Volunteer Protection Act*. The Task Force recommended that the Government of Nova Scotia modify the *Volunteer Protection Act* to limit the responsibility of the volunteer organization for the acts of volunteers. It also recommended that all governments in Atlantic Canada develop an effective volunteer protection act.[42]

The liability protection actually provided to volunteers by the Nova Scotia *Volunteer Protection Act* will become more certain once the courts have had the opportunity to rule on a case involving a claim for damages against a volunteer who has been negligent in the performance of his/her duties and meets the conditions set out in the legislation for liability protection.

Volunteer protection legislation may address affordability issues if organizations that currently purchase liability insurance for their volunteers no longer have to do so. Those financial resources can be redirected towards purchasing required insurances or go back in to program funding. The existence of similar volunteer protection legislation in this Province will not improve accessibility to insurance for organizations still requiring insurance i.e. those with employees and assets.

According to a legal opinion commissioned by IBC with respect to the Nova Scotia *Volunteer Protection Act*, there may be downsides to volunteer protection legislation:

> *"In its drive to protect volunteers, the legislation has taken away the right of non-profit organizations, and thus of their insurers, to seek indemnity from the volunteer for any vicarious liability that may be imposed due to the volunteer's misconduct. One would expect that enactments like the Volunteer Protection Act will do little to reduce insurance rates for such organizations and might, due to the elimination of the right of indemnity, even increase them."* [43]

6.7.4 Risk Classification

The classification of the voluntary sector for risk assessment purposes was raised as an issue during the review. It was suggested that voluntary groups are placed in the same classification with higher risk businesses for rating purposes for liability and directors' and officers' policies, leading to higher premiums that are not necessarily related to the actual risk. One reason suggested for this practice was the fact that insurers use standard industry classification codes for capturing loss information and these industry codes do not properly capture the diverse nature of the voluntary sector.

A report of the Voluntary Sector Forum[44] suggested that, because insurance companies and regulators use a multiplicity of insurance coding systems and rely on information infrastructure that is not integrated, there is inconsistency in how voluntary sector activities are classified. There is also a lack of aggregate data on liability insurance claims and premiums for the

[42] Atlantic Task Force Report, pg. 20.
[43] Brown, Nayers, Pitel, 2005, pg. 73-74.
[44] Voluntary Sector Forum, Addressing Liability Insurance Concerns of the Voluntary Sector, pg. 2.

voluntary sector. The report recommended a more coherent system to ensure voluntary sector risks are properly classified, assessed and priced. Ms. Connie Berry from Imagine Canada spoke to this issue in her presentation to the Board:

> *"I'm not going to get too much into the nitty gritties of all the different coding systems. I've tried to figure it out, I've talked to many people, but I'm just highlighting a little comparison of the codes for the voluntary sector codes. If you look at that, there's one IBC code for fund-raising activities, and whereas in comparison on some of the other categories, you know, you can have a different classification box for single roofers or hot tar roofers. You know, whereas fund-raising activities could be a bake sale or, you know, a marathon run or something like this. So, and I'm not saying that it's different specifically between the sector and business, but it's not up to date, it doesn't reflect the real activities."*

In her presentation Ms. Berry also highlighted the fact that, for automobile insurance, insurers are prohibited from using a risk classification system that is not just and reasonable in the circumstances, is not reasonably predictive of the risk, and does not distinguish fairly between risks. She stated: *"and I just think there's quite a contrast between the types of protections consumers get for auto and P&C insurance, because there's no comparable provision for commercial customers."*

One of the questions for the Board was to determine whether the classification used by insurers for voluntary sector risks was contributing to the insurance challenges being faced by the sector. The Board asked insurers to identify the risk factors that are assessed in determining the classification and level of risk of the voluntary sector for insurance rating purposes. All insurers who write coverage for this sector confirmed that there is no distinction made between the voluntary sector or the for-profit sector either from an underwriting or risk appetite perspective. Risk assessment and rating of risk is based on individual factors and would be mostly affected by the type of activity undertaken by the voluntary organization. It is left to the judgement of the underwriter to decide on whether to accept the risk and to determine the rate accordingly. The only exception to this appeared to be for directors' and officers' liability insurance, where some companies indicated they do distinguish between the voluntary sector and other commercial enterprises. One insurer stated that the directors' and officers' liability exposure is more manageable for voluntary organizations and as a result they prefer to write these policies for non-profits.

In its written submission on commercial insurance IBC also spoke to the issue of risk assessment for the voluntary sector. IBC stated:

> *"Not-for-profits purchase insurance because, under the law, they face similar risks as for-profit enterprises. The law does not make a distinction for not-for-profit endeavours and, therefore, neither does the insurance industry. For example, the price of insurance for a not-for-profit day care centre is the same as a for-profit centre because their risks and legal exposures are the same. The only difference in price would be as a result of risk profile unique to the day care centre, e.g., location, risk management practices, training of staff."*

A survey completed in Spring 2005[45] by the IBC of commercial insurers in its membership revealed that most companies do not have a dedicated underwriting team for the voluntary sector. This is in keeping again with the information above that the companies do not distinguish between profit and non-profit but rather the risks presented.

The coding systems used by insurers may result in some voluntary organizations being classified with other businesses, which may or may not have similar risks as the organization. It is not clear however that this classification grouping has an impact on the risk assessment for insurance rating purposes. According to the information provided by the industry, there does not appear to be any distinction made by underwriters in assessing the risk between a voluntary group or a for-profit business. The key factors considered are related to the activities, the types of clients served, potential exposure to legal action and the claims experience, which are related to risk. The classification of the voluntary group may be a factor, however, if the claims experience of that group is used in determining the premium. Since the claims experience for the voluntary sector is not tracked separately, it is not possible to determine whether or not this is the case.

One insurer in responding to a question from the Board on this issue stated that they are just starting to identify voluntary or non-profit risks in their statistics with a view to be able to identify these organizations in their records and respond to questions from provincial authorities about these specific issues. However this insurer emphasized that this was only being done for information purposes and not because they regard voluntary organizations as a distinct group.

6.7.5 Board Comments

Addressing the insurance challenges raised with respect to the voluntary sector is, in the Board's view, one of the most important considerations for Government arising from this review. It was acknowledged by all stakeholders that this sector requires special consideration and a focussed effort towards solutions if the valuable programs and services provided by this sector are to be maintained. The organizations delivering these services are in many cases functioning in small communities with no staff and limited financial resources, and are often not informed or equipped to deal with the serious liability issues associated with their activities. The specific options outlined in this section with respect to education and outreach, funding and volunteer protection in conjunction with the other options such as implementation of risk management

[45] Results of A National Survey of Insurers about the Voluntary Sector, [accessed online at www.ibc.ca].

plans, may help in addressing some of the issues raised. However the Board is concerned that without some immediate attention the voluntary sector in the Province will be severely limited in its ability to continue to deliver important community based services that benefit all people of the Province.

6.8 Data Collection

During the review the Board heard from a number of stakeholders of the frustration experienced with increases in premiums without the ability of the industry to demonstrate that increasing claims costs were causing the significant increases in premium levels. Other presentations and studies in Canada have also raised the issue of the need for credible data and statistics in the insurance industry. Also, as discussed in Section 2.4, the lack of available data limited the Board's ability to conduct a full review and provide comment on the reasonableness of rates and insurance profitability.

6.8.1 Submissions, Presentations and Comments

The Consumer Advocate, in his written submission to the Board on homeowners insurance, addressed the need, in his view, for routine data collection. He supported the recommendations of Mercer in its 2004 report to Government with respect to the gathering of information in the Province for all insurance products. In addition the ongoing collection of the data requested by the Board of insurers as part of this review was also recommended. According to the Consumer Advocate *"such data would permit Government and stakeholders, including consumers, to stay abreast of the homeowners insurance market."* The Consumer Advocate also supported implementation of recommendations 15 and 16 of the NSIRB report which would mandate the filing of homeowners rate manuals and rate profiles with the appropriate authority, with the latter being posted by the authority on a website for the public's access.

In his March 24, 2006 submission to the Board on commercial insurance the Consumer Advocate also addressed the impact that lack of data has on the ability to address solutions. He stated:

> "*Given the present state of data collection it is not possible to assess whether legislation limiting the liability of non-profit organizations to gross negligence, limiting compensation for slip and fall injuries, limiting liquor liability, or limiting liability for those involved in outdoor adventure operations would have any appreciable impact on affordability and availability of the insurance product in this province. In fact, several groups who appeared before the Board have stated that there is disconnect between their claims experience and their premiums, with most groups reporting excellent claims experience."*

While it is possible that such liability reform legislation, if passed in this Province, might improve affordability and availability, the Consumer Advocate stated that there is simply at present insufficient evidence to support such reforms. However, while supporting the need for data collection, the Consumer Advocate expressed a caution:

"The Consumer Advocate believes it would be potentially harmful to the provincial commercial insurance marketplace if Newfoundland and Labrador were to unilaterally impose a data collection responsibility on commercial users operating within the province. Given the fragility and small size of our market, it is not in the commercial insurance consumers' interest to make it more difficult for insurers to participate in the market by imposing data collection obligations that are not required in other provinces."

The Consumer Advocate recommended that the Province should work in concert with other provinces to establish mandatory statistical plan reporting and timely compilation and release of detailed premium exposure and claim information for personal property, commercial property, commercial liability and director's and officer's liability insurance.

Ms. Rowe of the Community Services Council also spoke to the issue of data collection in her presentation to the Board:

"My impression is that it is possible for better data to be collected. And my assumption also is that if good data was being collected, there would be an opportunity to have, as we spoke about before, differential prices for differential types of risk. Obviously risk changes. When I was running a day care centre, the risk I was carrying in my organization was quite different from when we're just an office. But, without data to justify why prices are what they are or what kinds of claims are being made, then we can always hide behind generalities."

In responding to this issue IBC stated that the industry does not see the need for a mandatory data collection program relating to homeowners or commercial insurance. In its final submission on commercial insurance IBC set out a number of reasons why industry loss data will not make insurance more affordable or available:

- Mandatory reporting of data will not reduce costs or open up new market opportunities for groups hit by the latest hard market cycle.
- Newfoundland and Labrador does not have the market size needed to make this type of data meaningful for actuaries to price insurance.
- Data collection adds to insurers' costs. Ultimately, the cost of doing business is passed onto consumers through higher prices.
- Data by its nature is out of date before it is published. It reports what has already happened and in some cases, as much as two years prior. It does not address for insurers the question of what will happen tomorrow – a critical part in determining premium price.
- Better reporting of more data would not have eased the last hard market cycle.

It was also pointed out by IBC during the commercial insurance session that Newfoundland and Labrador specific data would not be credible statistically, especially for commercial risks:

"…in terms of data credibility that on the commercial side in Newfoundland and Labrador, there just simply are not enough risks. As I said, I think, at the outset, there simply aren't enough risks that would make the data credible in any way, shape or form. And in fact, even to look at regional or national data for some risks, still not enough to make it credible."

The usefulness of such data to insurers in addressing commercial rates was also questioned by a number of insurers. During the meetings on commercial insurance one insurer stated that, in his view, the usefulness of data would be limited because of the way that commercial insurance is priced:

> *"…commercial insurance is not static. In fact it is very fluid and things that are true today may not be true tomorrow. And in order to be successful underwriting commercial insurance, one has to know what is going on and be able to react very quickly. The commercial insurance and not to single out commercial insurance and general liability, but certainly those classes of business are very complicated to underwrite. People take a long time and spend a lot of effort to learn how to properly underwrite and become underwriters. It's not born into a person to be an underwriter. So to take amounts of abstract data and try to extrapolate from that trends, especially loss trends, would be problematic, and I don't think that it would be – it certainly would not be useful in my operation."*

The costs that industry would have to incur to put in place the necessary resources, systems and technology infrastructure to collect the required data was also identified as a significant concern by insurance companies. This was particularly highlighted for smaller companies that may not have the in-house resources of larger firms. Ultimately consumers will pay these costs through higher premiums. In addition if the data collection was only required for those companies operating in Newfoundland and Labrador the additional requirements and associated costs may act as a disincentive for companies to continue to write in this market or in encouraging new companies to enter the market.

6.8.2 Other Reports and Submissions

Several reports and submissions prepared by other insurance stakeholders which were referenced as part of this review also raised the issue of data.

In a presentation to the Senate Committee on Banking, Trade and Commerce the Canadian Federation of Independent Businesses stated:[46]

> *"CFIB believes that an appropriate starting point to better understand the P&C insurance market is the collection and publicly reporting of statistics on business insurance."*

The Canadian Federation of Independent Businesses recommended:

> *"Additional information and statistics should be collected and reported publicly on business insurance. While much information exists on personal auto insurance, there is insufficient information available publicly on business insurance (e.g., commercial auto, property, liability, business interruption, etc.). The collection and publicly reporting of statistics on business insurance would help increase the overall understanding of the P&C sector and allow the tracking and monitoring of market trends in business insurance premiums and the availability of business insurance."*

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[46] Ensuring Canada's Future Through More Effective Banking and Insurance Services, CFIB Statement, Senate Committee on Banking, Trade and Commerce, February 17, 2005

Another presentation by the Voluntary Sector Forum to the Senate Committee indicated that the insurance industry's response to the recent hard market has had a detrimental impact on the voluntary sector. *"Premium prices have increased several-fold without apparent relation to the organization's claims experience or risk profile. In some cases, insurers simply declined to renew policies with little or no notice."* The presentation goes on to further question whether or not pressure is being placed on non-regulated lines of insurance by claims arising from the regulated auto insurance line.[47]

A March 2005 Report prepared for the Muttart Foundation dealing specifically with liability insurance issues facing the voluntary sector provides the following comment:

> *"An issue raised repeatedly in the literature is the lack of sector specific data. Voluntary sector organizations for insurance purposes are classified the same as commercial businesses. Without sector specific data it is impossible to measure the impact of risk management programs or legal decisions as they relate to the sector."*

The author concluded:

> *"As with the three previous cycles over the past 30 years, if nothing is done to address the issue, some years from now once again the sector will be in crisis, scrambling to find appropriate and affordable coverage."*[48]

Another report by the Voluntary Sector Forum on addressing liability concerns of the voluntary sector identified data management as a key challenge for industry and regulators:

> *"Data management – Insurance companies and regulators use a multiplicity of insurance coding systems and rely on an information infrastructure that is not integrated. These factors contribute to inconsistency on how voluntary sector activities are classified, and a lack of aggregate data on liability insurance claims and premiums. A more coherent system would ensure voluntary sector risks are properly classified, assessed, and priced."*[49]

A background report on voluntary organizations prepared for the Atlantic Task Force stated: *"Unfortunately, there is a remarkable lack of hard data related either to probabilities or consequences of adverse events in the voluntary sector."* The report goes on to say that the lack of data is attributable in part to the fact that insurance for the voluntary sector is provided by a number of different insurers; it forms a relatively small portion of the coverage provided to the commercial sector; and there is no organized program to collect data. [50]

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[47] Voluntary Sector Forum, Submission to the Senate Standing Committee on Banking, Trade and Commerce, February 14, 2005, pg. 2.
[48] Gael MacLeod, Approaches to the Insurance Dilemma: A First Cut for the Voluntary Sector, pg. 32; pg. 58.
[49] Voluntary Sector Forum , Addressing Liability Insurance Concerns of the Voluntary Sector, April 2005.
[50] Wolfgang Uebel/BizNext, pg. 33.

Recommendations for data collection have been made as far back as 1986. The following are excerpts from the 1986 Final Report of the Ontario Task Force[51]:

> *"Reports of activities being terminated by reason of lack of insurance have been common. Insurers point to high court awards in the US and to the high cost of defending even frivolous claims, while the insureds argue that the increase in premium rates and the reduction in coverage have no apparent relationship to the history of claims against the insured."*
>
> *"Over and over again, the Task Force was told the cost of insurance had increased because of social inflation in awards and settlements… However… without more information, hypothesis of all sorts remain unchecked and unverifiable. More importantly, the defenders of the status quo will be able to continue to assert that there is no evidence to support criticism or proposal for change."*
>
> *"The Task Force suggests that the industry associations and the government authorities make a special effort to develop statistical and analytical programs to fill most of the gaps noted above. Much the same plea was made about a decade ago…Not much has happened in the intervening decade. In this crisis, the public and the industry have suffered more than they needed to, in part because of the confusion resulting from the gaps in statistics and analysis. It would be unfortunate if a Task Force or a Legislative Committee a decade from now had to repeat this plea."*

In its 2004 report Mercer recommended that Government institute a formal tracking process by which the following information is gathered and reviewed at least on an annual basis:

- The number of insurance companies actually writing insurance in the Province, by line business, compared to other periods
- The number of new insurance companies entering the Province, by line of business
- The number of insurance companies exiting the Province, by line of business

This information would, according to Mercer, allow for monitoring of the degree of availability or affordability problems within the Province for all insurance products reviewed. Mercer also recommended that Government consider making the reporting of statistical data to IBC mandatory for homeowners, commercial property and commercial liability insurance.

The NSIRB Report recommended that data be collected to allow for the tracking of basic policy information, detailed risk experience data and expense information. According to the NSIRB the mandatory reporting of detailed personal property, commercial property, commercial liability and director's and officer's insurance risk experience and claims data into a statistical plan would enable Government to assess the reasonableness of insurance rates. To be of greatest value, and to have the most credibility, information is needed from all insurers and must be provided on a timely basis. The NSIRB stated that it would be preferable to collect this information on a Canada-wide basis, but this data would be of value if collected only for Nova Scotia particularly with respect to homeowners insurance. Efforts to collect the data can be coordinated through the Canadian Council of Insurance Regulators or, alternatively, through a joint insurance committee for Atlantic Canada.

[51] Ontario Ministry of Financial Institutions, Final Report of the Ontario Task Force on Insurance., May 1986, pg. 31;pg. 159.

The Atlantic Task Force Report also addressed the data issue:

> *"Insurance data*
> *Data – the amount, the type, the reporting – was the subject of much discussion around the Task Force table. The apparent disconnect between claims history - or lack of claims history – and premium increases was initially assumed to be due to the lack of appropriate data. The insurer representative advised the Task Force that data was just one part of the underwriting process and that mandated data collection, similar to that which exists for auto insurance, would not have prevented the hard market."*

> *"Recommendation #11:*
> *IBC should continue to facilitate meetings between insurers and representatives of affected groups based on the type of activity they undertake. These individual meetings are more likely to be helpful in obtaining useable data."*

6.8.3 Options for Data Collection

There are a number of alternatives available to obtain information related to losses for various coverages. One option is to establish a statistical plan similar to the Automobile Statistical Plan and the existing commercial liability plan in Ontario to collect specific data for Newfoundland and Labrador. This plan would be all encompassing and require data for all lines of insurance written and for all coverages. Alternatively a selected statistical plan could be established which would only collect data for a specific product, such as commercial liability, and perhaps only for certain risks, such as liquor liability or the voluntary sector.

A second option, which may address the question of what were the primary drivers for the increased premiums for certain risks in the past, may be to undertake a study similar to the closed claims study recently undertaken by the Board as part of the automobile insurance review. These options are discussed more fully below.

i) Statistical Plans

In order for a statistical plan to provide useful data, the plan must be established on such a basis as to capture information on similar risks in sufficient numbers to provide credibility. While this is possible for auto insurance and perhaps also for homeowners insurance because the risks are fairly homogeneous in nature, it is more difficult in relation to commercial property and commercial liability insurance. Because commercial insurance is provided for a wide range of different and unique risk exposures, the number of similar risk exposures may not be large enough to provide sufficient data to be credible in any form.

Statistical plans must be designed to collect only the data that is necessary for the purpose for which it is to be used. A more refined data collection requirement (for example, the voluntary sector) may result in less credible data because of a decreased sample size. However, a broader data collection requirement may not provide sufficient data to be predictive of the level of risk for any particular sector of commercial operations. As well, for a statistical plan to provide information necessary to determine the reasonableness of rates, there would have to be a sufficient number of claims to provide a credible body of data on which to project future anticipated losses.

Statistical plans generally will also require a minimum implementation period to deal with issues involving coding errors, data verification problems and an assortment of start up related issues. Once the system has been debugged, the plan will not start producing data that can be analysed with any degree of usefulness for a period of three to five years, depending on the number of claims reported. To illustrate, in relation to automobile insurance liability, actuaries generally use claims data for a minimum four-year period.

There are also significant costs associated with data collection through statistical plans. These costs include those associated with the design and set-up of the plan, infrastructure and resource requirements for both the collection agency and the insurers providing the data, costs of analyses and publication of data, and costs associated with on going monitoring and updating of the plan.

Under a selective statistical plan insurers would be required to report their premium and loss experience for specifically identified industry codes rather than for all industry codes. This will result in data for specific industry codes, reflecting those sectors of interest, such as the voluntary sector or the hospitality sector, for example. One benefit of this option is reduced costs and the ability to have direct experience reporting for those groups most adversely affected by significant premium increases for the liability product. Again, however, as with the full statistical reporting of data, this approach would not yield useful results for many years following implementation, and would have the same credibility issues with only Newfoundland and Labrador data due to the small number of risks written in the Province.

ii) Closed Claims Study

A closed claims study similar to that completed by the Board as part of the automobile insurance review could be commenced quickly, be completed in a relatively short period of time, and may provide an answer as to whether or not claims costs or social inflation are driving forces behind recent premium increases. The platform for a closed claims study has already been constructed and could be refined to meet the information requirements of the diverse risks comprising the commercial insurance sector as well as homeowners insurance. As well, this option would incur a one-time cost as opposed to the ongoing costs associated with a statistical plan.

The drawback of this option is that, in order to be of benefit, there needs to be a sufficient numbers of claims (not insured risks) to provide a credible body of information for review and analysis. This was an issue in the closed claims study for commercial vehicles completed by the Board. Prior to any decisions in this regard a determination should be made on the number and types of claims made under the various lines of commercial insurance and homeowners insurance. In this regard, it may also be appropriate to expand the study area to include the Atlantic Region, or perhaps Canada.

A focused closed claims study could also be undertaken which would concentrate on those areas or industry codes experiencing significant increases in premiums such as the volunteer, small business, service club and other sectors. These sectors have all indicated their experience of increased premiums with few or no claims having been made. Using such an approach, the study may be able to identify whether or not premium increases within the Province for these classes of insured are in fact being driven by loss experience. It is suspected that the claims frequency would be very small and as a result may not be actuarially credible for rate-making purposes. However such a study may provide information on whether or not loss experience and loss costs are driving premium increases.

6.8.4 Board Comments

Ultimately the collection of data could provide a measure of assurance, to the extent possible, that insurers' pricing of the liability product is reasonably supported by the costs of providing that product and to ensure that those sectors of the main industry codes causing the costs pay their reasonable and fair share and not be subsidized by other industry sectors.

However any mandated data collection based only on experience in Newfoundland and Labrador will be of little benefit. Given the diverse nature and low numbers of similar risks, with the possible exception of homeowners insurance, there would be insufficient information available on a Province-wide basis to provide a credible database or to justify the cost of development of a plan and reporting, summarizing and publishing the data. A larger body of data would be available if the reporting requirement were on an Atlantic basis but the most useful body of data would be Canada-wide.

As well, any additional costs associated with increased data collection and reporting by insurers will be transferred to consumers as part of their insurance premiums. The development and implementation of a data collection program will take a considerable amount of time. If the Ontario Commercial Liability Statistical Plan is used as a basis, costs and time requirements may be reduced somewhat, but will likely still be significant.

The Board recognizes that, with or without data, the insurance industry cycle of hard and soft markets will not be eliminated. The collection of data may, however, provide the connection necessary between claims history and rate impacts for groups such as the voluntary sector and other distinct groups. The collection and publication of data can be used to demonstrate the relationship on specific insured sectors between the overall claims experience of the sector and the resultant rate impacts, and also to track benefits of risk management programs in reducing claims costs over time.

The issue of data collection is currently under examination by IBC's Strategic Information Steering Committee. This group is evaluating various data collection methods and will be reporting its recommendations to IBC's Board of Directors in 2006. IBC recommended that this process be allowed to continue to work and that there is no need to mandate the collection of data at this time.

If it is determined that there is a need for mandatory reporting of information IBC suggested that the newly established General Insurance Statistical Agency (GISA) is the correct vehicle for reviewing and prioritising this request in conjunction with the other information needs of insurance regulators from across Canada. GISA was set up by insurance regulators from across Canada as a non-profit corporation in June 2005 with a mandate to provide governance over the various mandated data filings required by the participating insurance regulators.[52] Given the mandate and composition of this group GISA would be the most appropriate vehicle through which discussion and consensus could be obtained on the necessity for and the development and implementation of a national statistical reporting plan for the various types of insurance.

As described in Section 2.4 of this report, the lack of credible data collected in standardized format has limited the Board's ability to assess the reasonableness of current rates and to make any comment as to the reasons behind the recent rise in insurance premiums. If Government wishes to make a definitive statement in these areas, a complete and credible base of data is required for actuarial analysis or, in the alternative, a full or focused closed claim study will need to be undertaken to identify loss experience by industry sector. In the absence of such the issue cannot be resolved and will most likely be raised again during the next hard market in the industry cycle.

6.9 Additional Public Policy Considerations

6.9.1 Taxation

During the Automobile Insurance Review consumers, small businesses and other individuals/organizations all criticized the level of taxation applied to insurance premiums in this Province. Given that provincial taxation is the same across all forms of insurance, the Board also heard similar criticisms leveled at the high proportion taxation contributes toward the costs of homeowner and commercial insurance products.

Taxation in Newfoundland and Labrador comprises a premium tax of 4%, which is incorporated into the rate charged consumers for each insurance product, and a Retail Sales Tax (RST) of 15%. Quebec is the only other province to charge RST on insurance premiums, their rate being 9%, with other jurisdictions charging an insurance companies tax, generally ranging from 2% to 4%.

The following exhibit from the Atlantic Task Force Report shows the relative percentage tax paid by consumers in each Atlantic province:

Premium Related Tax Rates				
	Premium Tax	**Fire Tax**	**Sales Tax on Premiums**	**Combined Rate on Premiums**
Newfoundland and Labrador	4%	0%	15%	19%
Nova Scotia	4%	1.25%	0%	5.25%
New Brunswick	3%	1%	0%	4%
Prince Edward Island	3.5%	1%	0%	4.5%

[52] This Board is a participant in the Technical Advisory Committee of GISA which is currently working on an Information Technology Renewal Program to update the Automobile Statistical Plan nationally.

The Atlantic Task Force Report states:

> *"Newfoundland and Labrador levies a tax of 15% on insurance premiums. The result is consumers pay sales tax on an amount that includes premium tax, calculated on an amount that includes sales tax - effectively, consumers pay a tax on a tax on a tax. This is not simple, equitable or effective and it results in the highest tax rate on insurance premiums charged in any of the G7 nations."*

Ms. Rowe of the Community Services Council recited some of these same findings in her presentation to the Board. Ms. Rowe indicated she had previously recommended to the Minister of Finance (Newfoundland and Labrador) that taxes on commercial insurance premiums be reduced or eliminated, particularly with a view to improving access and affordability of insurance products to the voluntary sector.

In its written submission on homeowners insurance IBC indicated the cost of insurance in Newfoundland and Labrador is comparable to that in the remaining Atlantic provinces with the key difference being the amount of provincial tax paid on insurance transactions in this Province. IBAN in reiterating this point commented on the lack of transparency in that insurers, by law, are not permitted to inform consumers of the amount of premium taxes built into rates.

The Consumer Advocate was clear in his position on this issue during the automobile insurance review where he referenced both auto and homeowners insurance by stating "*…the level of taxation on insurance products….is unconscionable*." The Consumer Advocate recommended that *"...serious considerations ought to be given to reduce this significant and inordinate burden on consumers in this province."*

In a letter to the Honourable Loyola Sullivan, Minister of Finance and President of Treasury Board, dated May 20, 2004, Mr. Bradley George of the Canadian Federation of Independent Businesses referred to a survey of its members in Newfoundland and Labrador asking whether or not the provincial government should eliminate the insurance premium tax. Mr. George indicated that 74% of the respondents replied yes to this question and noted that *"...the cost of insurance remains the number one concern of small and medium sized enterprises…".*

The St. John's Board of Trade indicated the 15% RST is often confused with the 15% HST and some businesses mistakenly assume they are eligible for HST input tax credits on their insurance expenditures. The Board of Trade further noted this tax places a significant burden on consumers and puts them at a distinct disadvantage compared to other jurisdictions when purchasing insurance, acknowledging that, from a fiscal standpoint it may be unrealistic for Government to do away with the tax overnight, the Board of Trade suggested it could be gradually reduced and then eliminated.

The high level of taxation applied to insurance products in Newfoundland and Labrador has been a constant and recurring theme during this review. The 15% RST and the 4% premium tax incorporated as part of the insurance rate is estimated to produce a combined tax on tax of 19.6% added to the actual cost of insurance products. Information was brought forward during the review indicating that this rate was the highest among Canadian provinces and indeed the highest among nations in the G7 countries. The Consumer Advocate, the insurance industry, the Canadian Federation of Independent Businesses, the St. John's Board of Trade, and the Community Services Council along with numerous other individuals and groups suggested this level of insurance taxation was excessive and burdensome, not only to their respective vested interests but also to the ordinary consumer of insurance in Newfoundland and Labrador. There was broad based support for Government to either reduce or eliminate taxation on insurance premiums. If this is unacceptable then, in the short term, the taxation implications on consumers, the small business and voluntary sectors and possibly others should be evaluated, and whatever recommendations may be warranted from such an evaluation should be implemented. There was a consensus that as Government considers ways to tackle insurance issues on a go forward basis, which may undoubtedly require additional consultation with numerous stakeholders holding differing views, taxation is one area affecting the cost of insurance that Government has the ability to act on decisively. The St. John's Board of Trade expressed this thought in speaking to its proposal to phase out insurance taxes as a way of bringing measurable relief to consumers: *"It is in government's direct control to do so."*

6.9.2 Legislative Reforms

The subject of legislative reforms is often raised as one way to alleviate the upwards pressure on loss costs and premiums experienced by insurers and consumers, especially during hard markets. During the Board's recent automobile insurance review tort reform for automobile insurance was the subject of comprehensive and detailed commentary. In relation to the possible introduction of caps and deductibles on awards for pain and suffering related to automobile accidents the Board stated in its report:

> *"While a diversity of views were presented during the review in relation to the issue of restrictions on recovery of pain and suffering awards the Board observes that there was a consensus on two important points: recent rate increase are a concern, and caps and deductibles are serious limitations rights that should be implemented only following careful consideration."*

Following the issuance of the Board's report amendments to the *Automobile Insurance Act* implemented a $2,500 deductible for pain and suffering awards arising out of an automobile accident. Similar approaches have been considered and taken with respect to automobile claims in other provinces. In Alberta, New Brunswick and Nova Scotia a cap was placed on claims for pain and suffering for minor injuries. Ontario also has placed some limits on recovery for pain and suffering.

The issue of legal reforms was also raised in the context of homeowners and commercial insurance during this review. The Terms of Reference for the review of commercial insurance specifically identified caps and deductibles as a possible solution that should be examined by the Board.

It was clear from the submissions and presentations that there is a view that the high premiums are caused by increasing and perhaps unjustified claims. In its written submission to the Board the St. John's Board of Trade said:

> *"It is generally agreed that society in Newfoundland and Labrador is becoming increasingly litigious, which is, in part, driving liability insurance rates and risks. More people are apt to sue and seek compensation for minor slip-and-fall accidents, for instance. To paraphrase one risk manager: In the past, if someone took a spill on a business owner's stairs, they would jump up and dust themselves off before anyone noticed – Today, if a person falls, they stay down to make sure someone sees them."*

In its submission the Board of Trade provided the following comments from one of its members:

> *"We are all hit with significant increases in property, liability and auto coverage. That is if one is lucky enough to have an insurance Broker that has a market that will provide the coverage! The Insurance Industry is under great pressure, as it has been hit by many big losses. As well, the industry faces massive court awards that rarely reflect what the claimant deserves. Little can be done regarding the massive court awards – The courts have to wake up to the fact that it is not the "big fat insurance company" that are paying for these settlements. Not until the investment climate turns around, loss experiences improve and court settlements become realistic will prices come down!"*

While there appears to be a view that general damages are to blame for the high cost of insurance, a recent detailed study of the legal considerations potentially contributing to the rising cost of insurance details potential contributors far beyond the often discussed rising pain and suffering awards. The report, *The Impact of Recent Legal Developments on Liability Insurance*, commissioned by IBC to examine legal developments impacting the cost of liability insurance, identified three broad areas of legal developments contributing to the increased insurance costs:

- insurance law - such as the duty to defend, the duty of good faith, the interpretation of the insurance policy, unjust or unreasonable terms being rejected in fire insurance and relief to insureds from contractual breaches.
- civil procedure - procedural rules such as those respecting class actions, foreign judgements, and limitation periods.
- tort - in addition to the pain and suffering awards other tort issues identified include developments in reference to fatal accidents, vicarious liability, pure economic loss and alcohol-related liability.

None of the stakeholders involved in the review called for specific immediate comprehensive legal reforms in either the homeowners, commercial or marine insurance context. As well, while the issue of potential legal reforms was discussed, the full spectrum of causes and solutions was not addressed by the stakeholders.

In its written submission on commercial insurance IBC referenced to certain emerging legal issues, including recent supreme Court of Canada decisions expanding the scope of liability for the voluntary sector, changes in civil procedure rules in relation to class action suits, recent laws increasing the responsibilities on Boards of Directors, and rulings increasing alcohol related liability. IBC does not recommend immediate comprehensive reforms in relation to any of these or other potential issues. Rather, IBC notes that the Atlantic Task Force recommended that

Government should take a leadership position in bringing stakeholders together to discuss the merits of tort reform and whether savings are possible.

A study into tort reform is currently being completed by IBC in conjunction with the voluntary sector as part of the Tort Reform Working Group. A report is planned to be released in May 2006**.** The working group identified the following seven reforms for comprehensive review[53]:

i) volunteer protection legislation;
ii) extending public sector legal protections to voluntary organizations
iii) limiting liability for inherent risks;
iv) eliminating double recovery;
v) reform of joint and several liability;
vi) limiting vicarious liability; and
vii) addressing significance of apologies.

Based on available information it appears that this report may make a good starting point for a discussion on potential legal reforms.

In this context the Consumer Advocate did not call for comprehensive legal reforms in his submissions. The final submission of the Consumer Advocate on commercial insurance did suggest that Government enact legislation to limit the liability of volunteers, similar to the Nova Scotia *Voluntary Protection Act* as a means of ensuring that volunteers are not discouraged from volunteering by concerns regarding legal liability. In terms of expanding this legislation to include the voluntary organizations the Consumer Advocate notes the lack of data in reference to whether claims against voluntary organizations have been a real issue, especially in light of anecdotal comments heard during the review suggesting few if any claims in this area.

[53] Wolfgang Uebel/BizNext, October 2005, pg. 48.

The Board notes that the limited available data was recognized by the NSIRB during its insurance review when it considered the issue of legal reforms. In its report the NSIRB stated that:

> *"The insurance industry would like to take legislative action to curb liability costs. For example:*
>
> *Legislation limiting liability for non-profit volunteer organizations to gross negligence (i.e. treat the organization like the volunteers), as discussed above;*
> *Limiting recoveries for minor injuries such as slips and falls; and*
> *Limiting liquor liability.*
>
> *The Board is reluctant to recommend any of these legislative action without stronger evidence of the nature and extent of the problem."*

The NSIRB recommended a special data call from insurers in relation to historical liability claims data for non-profit organizations as well as other risks be undertaken before considering legal reforms.

During this review insufficient information and data was brought forward to document in detail the underlying factors contributing to the level of rates for either homeowners, commercial or marine insurance. As discussed in other sections of this report, insurers do not report or maintain detailed information in relation to losses in homeowners, commercial or marine insurance. Absence of available data in relation to losses makes it impossible to conclude at this stage which legal reforms should be considered by Government or even whether such reforms should be considered at all. Without detailed claims information similar to that reviewed by the Board in the automobile review it is impossible to begin to understand the drivers for increasing costs and therefore it is not possible to determine the best way to solve the problem.

Upon release of the report of the Tort Reform Working Group Government may wish to consider the issue of tort and legal reforms, in cooperation with industry, sector groups and other provinces, with a view to identifying what additional data and consultation is required. It is also noted that, while it is clear that there are available legal avenues which may result in reductions in loss costs and premium reductions for homeowners, commercial and marine insurance, it appears that none of these opportunities have been developed to the implementation stage in this context anywhere in Canada.

6.9.3 Regulation - Rates and Underwriting

Mercer's 2004 report to Government deals succinctly with the issue of insurance regulation. The report describes regulation as Government having full power and authority to make, constitute and ordain laws, statutes and ordinances, for the public welfare and good government. The primary goals of insurance regulation, as reflected in the report, are the protection of consumers and to *".....maintain and encourage competition in Canada in order to.....provide consumers with competitive prices and product choices*."[54] The report explains the goals of insurance

[54] Quoting the Canadian Competition Act, R.S. 1985, C-34, Section 1.1

regulation respecting affordability and availability may be achieved through the manner in which a government chooses to regulate or monitor insurance company products (i.e. policy forms, underwriting rules[55] and rates), insurance company financial results and insurance company operations.

Mercer notes that in Canada there is no rate or product related filing requirement imposed by any provincial regulator for homeowners, commercial property, commercial liability, and marine insurances. By contrast, most states in the United States have filing requirements for rate levels as well as coverage/rules/forms. Unlike Canada, the United States do not by and large leave these insurance products up to the forces of competition amongst insurers to self-regulate. In commenting on insurance regulation as a remedial mechanism, Mercer noted regulation may actually serve to stifle competition without solving the problems it was originally intended to correct. It was acknowledged, however, that when insurance market forces are not operating to the mutual advantage of insurance companies and consumers, and availability and affordability problems persist, and all other efforts fail, some manner of regulation of insurance company products or operations may be warranted.

IBC described the homeowners and commercial insurance marketplace as working well, albeit with fewer insurers than most provinces; it is competitive, diverse and offers a range of products, services and choices to consumers. On the subject of regulation, IBC concluded:

> *"While price regulation has been a typical Canadian response to insurance cycles in recent decades, this is not common in the rest of the world and in other industries. The global trend is towards greater reliance on market forces to determine insurance prices. Academic research and practical experiments have also uniformly demonstrated the failure of price regulation to produce greater price stability. In fact, price regulation ultimately increases volatility in insurance premiums as regulators and consumers would note that in the intermediate term, price regulation does not result in stable prices. In the context of this study it is clear that to impose new legislation or regulations would be providing a solution to a problem that has not been articulated."*

More specifically on the question of underwriting rules and homeowners insurance, IBC submitted it may be counter-productive to attempt to regulate a non-standard product like homeowners insurance. If underwriters are forced to provide the same product then increased prices and reduced competition can be expected, neither of which, IBC noted, is in the best interest of consumers. IBC concluded more appropriate responses may involve improved consumer education coupled with individual consumers becoming better informed of the products available.

IBAN echoed the position of IBC, emphasizing that this Province has the lowest average claim payment and the lowest premium (tax adjusted) for homeowners insurance in the region (Atlantic provinces), proving that free market competition is working. IBAN posed the question that with any product where coverage is not mandatory, why should there be regulation when competition will help to police these situations? On the issue of insurance being a practical

[55] Underwriting rules vary from company to company setting forth the criterion for accepting risks and compliance with applicable laws and public policy implications.

requirement for mortgage financing, IBAN indicated insurance should not be a mechanism to determine the availability of such financing, which is more appropriately a matter to be discussed with the banks.

With respect to the need for regulation of homeowners insurance, the Consumer Advocate expressed the view that, given the essential nature of homeowners insurance and the complexity of the product, a measure of regulation is justified. The issue for the Consumer Advocate is not whether anything should be done to protect consumers and enhance consumer rights, but rather how this is best achieved. The Consumer Advocate stated:

> *"It is submitted that as an alternative to intensive forms of regulation such as rate regulation which are expensive to establish and maintain and which may have the unintended effect of discouraging insurers from participating in the relatively small NL marketplace, consumers should be given the tools they need to make the marketplace work for them.*"

Or stated another way by the Consumer Advocate "…*consumers must be given the tools to allow them to level the playing field* …".

With regard to the construct of these tools the Consumer Advocate continued:

> *"Regulation could stipulate rules around what constitutes a 'full explanation'. Regulation could stipulate for example that the reason or reasons for early termination or non-renewal must be explicit with broad and conclusory statements such as "underwriting experience", "loss record", "location of risk", "credit report" and similar insurance terms not being by themselves acceptable explanations…. Under such a regime, the Superintendent of Insurance would not hold hearings or have the power to keep coverage in force, but would require the power to order an insurer to comply with its duty to provide full and specific reasons to the consumer for its decision where an explanation failed to meet the requirements of the province."*

In his written submission on commercial insurance the Consumer Advocate cautioned that, because of the small size of the commercial insurance market, any legislative reforms directly affecting the insurance options for commercial insureds must be undertaken with great care. He stated:

> *"Through this review it has become quite evident that there are limits as to what can be reasonably done by regulators and governments in this province to shield consumers from high prices in the commercial insurance marketplace. It is not in the interests of consumers in this province when the marketplace is already small and fragile to attempt to regulate rates and underwriting rules and thereby discourage insurers from participating in the market. Commercial insureds need more insurance options, not less. The context is important:*
>
> - *No jurisdiction in Canada regulates commercial insurance rates.*
> - *No jurisdiction in Canada regulates the manner in which commercial insurers devise their underwriting rules or make underwriting decisions.*
> - *No jurisdiction in Canada regulates the manner in which commercial insurers group or classify commercial insurance customers in setting rates. Indeed, the insurers who participated in the review stated that it is the nature of the activity undertaken by the insured that matters from a risk assessment perspective, not the type of organization (i.e. profit or non-profit) carrying out the activity…"*

The Consumer Advocate prefers an oversight and accountability approach to a more prescriptive regulatory model of overseeing underwriting risks, rates and policies of individual insurance companies. The Consumer Advocate suggests the more rigorous form of regulation may potentially contribute to availability concerns, discourage participation of new entrants or existing operators in the marketplace and encourage insurers to underwrite ideal risks only. On the other hand, the Consumer Advocate points out, the regulatory regime he is recommending represents a sound public policy alternative by protecting consumers against unfair, unreasonable, arbitrary or discriminatory decisions by insurers, obligating insurance companies to explain their actions and assisting the regulator (Superintendent of Insurance) in keeping abreast of the marketplace.

The Consumer Advocate also reported that some consumers specifically commented on the issue of regulation. One consumer commented that, as a practical measure, insurers can presently charge any rate they please and therefore regulatory measures should be introduced so as to require the approval of rates by the Board. The consumer also felt that there should be rules to prevent insurers from using an insured's mere inquiry as to a claim or other insurance coverage issue in the rating or renewal process. Another consumer suggested that consumers are not well served by insurers who did not have a representative in the Province and referred to rules in PEI where insurers are compelled to have a representative in the Province in order to write policies. Yet another consumer listed 8 complaints he had against insurance companies for unfair business practices and suggested insurers need to be regulated more closely. Another consumer favoured homeowners insurance being regulated like auto and further noted it should be made a public system along with all insurance products.

The St. John's Board of Trade cautioned not to over-regulate the insurance industry so as to exacerbate affordability and availability problems resulting in companies possibly vacating the Province leaving remaining businesses with higher concentrations of risk and insufficient capital to underwrite the needed coverage. By contrast, the Gander Chamber of Commerce stated that more Government regulation of insurance was necessary in order to protect consumers, as the free market approach was not doing so.

In its 2004 report Mercer recommended that Government consider requiring insurance companies to file (for information purposes only and not for prior rate approval) rate changes for any particular line of business, which may be of concern. These rate changes could then be monitored for significant rate increases. Beyond this the Mercer report offered no recommendations concerning insurance regulation.

The Board heard little support or indeed justification for fully regulating either homeowner or commercial insurances on a level comparable to that of automobile insurance. There is no evidence at the present time of specific availability or affordability problems in the current homeowners insurance marketplace. Furthermore, the availability and affordability problems that exist respecting commercial insurance, in particular the tourism and voluntary sector, will not be addressed through increased regulation.

If full scale regulation of rates, underwriting risks and policies were to be contemplated, the Board would support a more comprehensive data-based study into the specific affordability or availability problems such regulation would be designed to address, its effectiveness in mitigating these problems, and the likely impact on the Newfoundland and Labrador marketplace. As no precedent exists in Canada a comparative case analysis may prove beneficial by selecting an appropriate market and regulatory model along with selected best business practices currently operative in a United States jurisdiction.

6.9.4 Board Comments

The options surrounding reduced taxation, tort reform measures and regulation represent significant public policy questions for Government. Decisions in these areas are fully compatible with choices facing Government regarding consumer protection, consumer assistance and other mandated initiatives. Clearly regulations designed to provide adequate notice to consumers, a Consumer Bill of Rights and/or an insurance ombudservice require primary intervention by Government in the form of new legislation or amendments to existing. Secondary or tertiary responses requiring limited or no regulated intervention in the marketplace may focus on voluntary industry initiatives, improved education and awareness or other informal market conduct mechanisms. The degree to which Government decides to actively intervene with regard to these options will likely steer its thinking on these additional public policy considerations as well. In Section 7.0 the Board outlines an implementation framework which may assist with strategic decision-making relating to the full array of options presented in this report.

7.0 IMPLEMENTATION FRAMEWORK

7.1 Introduction

In reviewing the submissions and presentations of stakeholders during the review the Board was struck by the difference in the positions of IBC and industry representatives on the one hand and the those of the Consumer Advocate, on behalf of consumers, on the other. This difference was evident whether discussing the issues and problems in the homeowners and commercial insurance market in the Province or when examining initiatives or options designed to address these issues.

One of the key points emphasized by IBC and insurers was that the Board's rigorous review of the Province's insurance marketplace has not uncovered any significant problems with the availability or accessibility of homeowners or commercial insurance in the Province. IBC pointed to the fact that the Consumer Advocate's meetings were not well attended, complaints to the Superintendent of insurance are few, and that there was limited response to the Board's public notice requesting comments and feedback. According to IBC the marketplace in the Province is working well, albeit with fewer insurers than most provinces, and that there is no requirement for further intervention by Government in the form of regulations or legislation. Encouraging a competitive business environment without regulatory intervention for insurers operating in the Province is, according to IBC, the best way to ensure that consumers have access to a diverse range of products, services and other choices at competitive prices. This position was echoed in the following comment from an insurer during the roundtable discussion on homeowners insurance:

> *"And I couldn't agree with you more because the most powerful tool that we have for consumer protection and consumer advocacy is a competitive marketplace. We're all trying to provide the product at the lowest possible rate. We're all trying to enhance the product to get advantage over each other. We're all trying to provide superior customer service to get another advantage over each other. So if we can't--anything we do has got to enhance competition. ING, the largest insurer in Canada, does not operate in this province. We welcome them to come. We compete with them in every other jurisdiction that we're in. we're in every jurisdiction except Quebec. We would welcome the opportunity of an ING or anybody else for that matter who wants to come to this marketplace. It will only improve our game, and that's what we're all about. We want to improve our pricing structure, if possible. We want to improve our product, if possible, and our service, if possible. And that's what it's all about. The consumer is well served in a competitive environment. These clamps restrict competition, if we do go to enforcing some of these clamps."*

The Consumer Advocate, on the other hand, acknowledged the relatively low public interest shown in the homeowners' component of the review. The Consumer Advocate argued this lack of public concern should not be confused with the notion of not having a duty to strive and improve the current situation for consumers. In his written submission on homeowners insurance the Consumer Advocate stated:

> "*… we should not confuse a lack of expressed public concern over a particular issue (for instance, the assertion that consumers do not need the right to be advised of their deductible options because it is not a prevalent issue of complaint) with the notion that we do not have a*

> *duty in this review to try to improve the situation for consumers. With all respect to those who expressed differing views, the Consumer Advocate does not ascribe to the notion that unless there are hundreds or thousands of consumers clamouring for a reform that we should not consider the particular reform. The reform should be evaluated on its own merits as to whether it has potential to benefit customers or a member of that class without leading to an overall detriment. In addition, it should be noted that the reforms being advocated herein are not of a nature whereby consumers are being asked to give up a significant existing right."*

While not supporting formal regulation of homeowners insurance, the Consumer Advocate encouraged less intrusive regulation and proposed a variety of mandated initiatives including a consumer bill of rights, a consumer complaint mechanism and other regulations governing disclosure and transparency by insurance companies. With respect to the commercial insurance marketplace, the Consumer Advocate acknowledged that there are limits as to what can be reasonably done by regulators and government in this province to shield commercial consumers from high prices. He suggested it is not in the interests of consumers in this Province when the marketplace is already small and fragile to attempt to regulate rates and underwriting rules and thereby discourage insurers from participating in the market. He did however make a number of recommendations similar to those proposed for homeowners insurance, including legislative changes to enhance disclosure and transparency, a consumer bill of rights, and a consumer assistance initiative which would require development of a formal clearinghouse supplying information on non-traditional insurance purchase options.

The Board acknowledges that the participation of consumers was limited in this phase of the review. During the automobile insurance review the Board heard from a number of consumers from around the Province who expressed a high level of frustration and dissatisfaction in dealings with their automobile insurance providers. This discontent focused on the lack of transparency and explanation involving basic consumer issues, the sense that insurance companies are not acting in their best interest, and the feeling among consumers that they are powerless and without remedy or recourse to assist them in any dispute with their insurance company. Outside of a small number of consumer complaints from homeowners directed at some of these same insurance issues, neither the Board nor the Consumer Advocate heard from disgruntled consumers to the degree encountered during the automobile insurance review. This limited response may depict fewer consumer issues concerning homeowners' insurance, and to a lesser extent commercial insurance consumers, but may also be representative of the cyclical softening of the current insurance market.

7.2 Key Implementation Questions Arising from this Review

In the Board's view the goal of any initiatives or reforms to be considered by Government as a result of this review should not be evaluated on the basis of whether there were a large number of consumers or insurers calling for such reform. Any reforms should be assessed on the basis of whether the measures being considered will provide individual consumers, businesses and organizations with the tools and knowledge to be able to, as the Consumer Advocate noted, *"make the marketplace work for them."* The gap in the respective positions of the industry and the Consumer Advocate with respect to the necessity of many of the regulatory reforms proposed is not unexpected, given the different perspectives of both. To assist in bridging this gap the

Board has formulated a series of key questions that will have to be addressed by Government and other stakeholders in considering this report and which may give some structure to the formulation of an implementation plan arising from this review.

Homeowners

- What (if any) mandated initiatives are Government prepared to implement respecting homeowners insurance? These may include a consumer bill of rights, a consumer complaint mechanism, various other proposed disclosure and transparency initiatives covering deductible options, underwriting rules, broker commissions, plain language, full explanation, mandated repairs and renovations, et al.
- What joint interest does Government and IBAN have in further discussions on IBAN's voluntary program which has been operating informally but successfully since 2003 and was formally submitted to the Board during this review (November 2005) entitled "*A Plan for Homes in Downtown St. John's, and other Hard to Place Homeowner Risks"?* IBAN are to be commended for this initiative. Joint discussions may focus on improved reporting, access to information and program promotion.
- Does Government wish to address concerns raised with the Board regarding oil tanks? These concerns involve environmental hazards created by corrosion of bottom-outlet oil tanks as well as the looming issue regarding the number of homeowners who have yet to comply with environmental regulations respecting oil tanks slated to take effect March 31, 2007.

Commercial

- What (if any) mandated initiatives are Government prepared to implement respecting commercial insurance? These may encompass various consumer protection mechanisms including amendments to the *Insurance Adjuster, Agents and Brokers Act* relating to disclosure and transparency initiatives (e.g. deductible options, broker commissions and broker-insurer relationships, et al).
- Is Government prepared to accept the remaining non-mandated consumer protection initiative, which suggests the Superintendent of Insurance formally adopt a commercial insurance Consumer's Bill of Rights? This would contain a summary of rights including the right to deductible options, how to access consumer complaint mechanisms and how to avail of consumer assistance. This Bill of Rights would be supplied to the commercial insured by the insurer, upon issuance of a new policy, renewal notice or termination notice.
- What (if any) consumer assistance initiatives are Government prepared to implement respecting commercial insurance? This may include the establishment of a formal clearinghouse to assist organizations in finding non-traditional insurance purchase options.
- What (if any) support is government prepared to extend to the voluntary sector in assisting them with their insurance needs? This may include establishing a tripartite group (government/industry/sector representation) to further examine its specialized requirements, funding for an education and out-reach program, taxation exemptions and implementation of a *Volunteer Protection Act*.

- What proposals (if any) do IBC plan to pursue to ensure appropriate follow through on the recommendations flowing from the Atlantic Task Force Report?

General

- What (if any) other public policy initiatives are Government prepared to consider? These may include reducing taxation levels on all other insurance, mandatory data collection including profitability information, and enhanced support for education and communications initiatives.
- What action (if any) are consumers and related organizations, boards of trade, small business, economic development, professional and sectoral associations, labour/union groups and other sundry interested organizations prepared to undertake on behalf of themselves and/or their respective memberships to promote and encourage understanding of relevant insurance issues? Initiatives should recognize that an onus of responsibility lies with consumers to question, enquire and become knowledgeable about their own insurance needs. These initiatives may combine information, education and training and focus on the impacts of a hard market and what consumers might do to ameliorate their own business or personal circumstances involving insurance purchases.
- What additional voluntary solutions are industry (individual insurers, brokers, IBC, IBAC, and IBAN) prepared to launch to ensure consumers are better served in the next hard market? Such an approach may be strategic in nature and consider the following:

    - embrace an industry-wide commitment to better serve the interests of consumers;
    - ensure minimum acceptable standards covering a consumer's right to basic insurance information;
    - evaluate the effectiveness of existing programs/initiatives in supporting consumer assistance and access to information;
    - seek to better coordinate the availability of then proven existing programs while identifying new requirements to satisfy any unmet consumer needs in the marketplace; and
    - adopt a proactive strategy recognizing the industry has all the information and knowledge and should accept the greatest share of responsibility in educating and informing consumers.

7.3 Call for Action

The Board heard a number of calls for prompt action from various stakeholders participating in the review and, more specifically, the need for a champion to properly coordinate, monitor and implement actions arising from this Report. In most instances these stakeholders suggested the Government is best positioned, having the motivation, independence, leverage, ability and relative resources to follow through on any proposed implementation protocol.

The Consumer Advocate presented numerous mandated and other initiatives for the consideration of Government in terms of implementation. These proposals are outlined throughout this Report and are incorporated in the key implementation questions listed above.

Both the St. John's Board of Trade and the Gander and Area Chamber of Commerce have called upon the Government to action a number of the recommendations outlined in their presentations.

Mr. Robichaud of the Canadian Federation of Independent Businesses remarked not only on the need for action but also on the limitations of the provincial marketplace in bringing about significant change:

> *"I can sense that left untouched we're not going to pay much attention to this until the next hard market hits. I think its human nature probably."*
>
> *"I definitely see a window of opportunity also, even in market forces, I'm hearing – some companies are saying, you know what, small business is going to be our growth area. So if you try to capture all those different factors at once and bring those players around, you come about a number of good reasons why they would want to see things happen now. But if left to the –we see it is an industry, but it's a bunch of individual players, that's the thing at the end of the day somebody has got to co-ordinate something unfortunately for something to happen, or else you get a bunch of parallel actions, some may counter each other, and industry wise, it's not going to be done in Newfoundland and Labrador."*
>
> *"I would see even in Atlantic Canada maybe approach – and this is a good example of where we get a lot of similarities between our markets and together we've -- we don't mean much on the market, so we share that and yeah, it's all smaller markets where individual efforts have a biggest impact…".*

Ms. Rowe of the Community Services Council also commented:

> *"We know that the Provincial Government is making some indications that they want to do more to support the non-profit sector. May be this is a timely time to start sitting down in a serious way. It will require, I think, getting three or four people who could really represent the sector well, who would be really willing to put in the amount of time that's necessary to – so that people aren't taking through their hats that know exactly what they're talking about."*

Along similar lines the Atlantic Task Force concluded in its report:

> *"The sector (volunteer) is too fragmented, organizations are too small, and they lack the resources to deal with the problem themselves. If the initiatives are to be undertaken, the process needs a champion."*

Following up with Recommendation # 17 the Atlantic Task Force Report stated:

> *"The four provincial governments, in partnership with the insurance industry and the voluntary sector, should establish a joint process to provide independent information and advice to voluntary organizations to help them better understand the nature and type of insurance suited to their needs at the best possible price. Information should be available about sound risk management practices and practical methods to contain costs."*

Indeed the Atlantic Task Force Report called upon Governments, both individually and collectively in the Atlantic region, to assume the lead responsibility in implementing 8 of the 26 recommendations contained in its Action Plan. In response to a question from the Chair of the Board as to how the entire package of Atlantic Task Force's recommendations will get implemented, Mr. Forgeron of IBC responded:

> *"Don't know at this point, is the short answer. But, we will, we will have to figure it that out. We did make a commitment with that recommendation in the report to Penney* (Ms. Rowe*) and to others that many more discussions needed to take place in order to fulfill some of those. We have yet to sit with government, for example, here and talk in detail about the recommendations that are earmarked for government, what have they done, where do they find themselves, are there areas where we can assist, do they want to work together on some issues and so on. And that recommendation is clearly one where, I think, all need to sit down, take a look at what objectives do we want to set for this in terms of the type of information that needs to be put out there, how do we want to put it out, how much of it is push and how much of it is pull. And then once you've established a framework in that way, what's the best way to deliver that. You know we still think that government has an important role to play there and I think they're ideally situated in some ways from an independent point of view."*

Outside of Government's public policy obligations, Mr. Forgeron expressed reservations concerning Government pursuing a proactive role in relation to the broader scope of insurance issues. Mr. Forgeron suggested the industry had fundamentally changed as a result of the last hard market and a repeat performance of these market circumstances is unlikely. In addition, Mr. Forgeron stated:

> *"And in this study*[56] *while the mandate is clear, I still think that when you drill down in terms of a specific problem that we're trying to solve, it's problematic because there aren't that many, as we sit here today. Education, we'd all agree we've got to do more. Communication, we've got to do more. You know, government should review certain things, government should always be reviewing things from a public policy point of view. So, we can agree on all those, but when you get down to the specifics of what stakeholder A should do and stakeholder B should do, I appreciate that you're going to be challenged there, there's no question."*

[56] Study in this context refers to the Board's current review.

7.4 Timing

In his submissions the Consumer Advocate shared the view of most presenters in warning of the inevitability of the next hard insurance market. There was a consensus among stakeholders participating in the review that the crisis of the last hard market has passed and with notable exceptions, particularly the volunteer sector, most consumers in recent times are experiencing a general softening of conditions across all lines of insurance. Indeed in some sectors insurance issues have been overtaken by concerns regarding energy costs and the impact of future oil prices. Complacency, however, was not the order of the day and the Consumer Advocate warned *"storm clouds are already on the horizon"* in quoting Paul Novacs, President and CEO of Property and Casualty Insurance Compensation Corporation, who described the current state of affairs as follows:

> *"The outlook for 2005 is positive. This is shaping up to be a good year for insurers and consumers as most Canadian insurance markets are stable. But what goes up will eventually come back down. The insurance cycle peaked in 2003, if measured in terms of earnings or combined ratio. We have begun a three to five year slide in most key industry measures. Here we go again."*

In commenting on the current status of the insurance cycle, Ms. Voll of IBC noted:

> "*Well it depends how you want to measure it. Conventionally, it's measured by an ROE or by a combined ratio, and if you look at the statistics from the federal superintendent, you'll find that both of those measures weakened in 2005 compared to 2004, which would suggest that we started a new cycle. Not only – a soft period is longer than a hard period, so, you know, history would say we're in for two to seven years of softening and two years of correction, but that's history, and maybe history is going to change. So we don't know beyond that."*

Mr. Robichaud of the Canadian Federation of Independent Businesses in speaking to both the effort required to address insurance issues and the related question of timing stated:

> *"...but it's more of enhancing what's there now, but again, not waiting until the last minute to come up with what the solution could be again, and let's start identifying solutions now, working on implementing them, going through the problems now so that by the time we hit the next hard market, we've fixed it a bit."*

More specifically on the timeframe Mr. Robichaud observed:

> *"... but we got 18 months or 24 months to come up with what's the best strategy for Newfoundland and Labrador to hit these key points."*

Undoubtedly some uncertainty exists even within the industry regarding the length of the current soft period and the beginning of the next hard market. The information conveyed to the Board indicated, however, that the latest cycle peaked in 2003/2004 and whether one subscribes to the prospect of a 3-5 year slide suggested by Mr. Novacs or the 2-7 historical average referenced by Ms. Voll, there appears every likelihood of at least a 2-year timeframe available for implementation in advance of the next hard market. This period is also along the lines suggested by Mr. Robichaud.

7.5 Need For Collaboration, Coordination and Monitoring

Several participants stressed the need for proper collaboration and coordination among stakeholders regarding implementation as well as the need for on-going monitoring of trends, new initiatives and other projects occurring throughout the broader industry.

In speaking to the need for coordination, Mr. Robichaud of the Canadian Federation of Independent Businesses shared his experience in New Brunswick in stating:

> *"It's got to be coordinated by government as far as how this is going to move forward."*
>
> *"What's missing in New Brunswick is we don't have that co-ordinator approach there either, right now, so what that person does, although there's value, I'm sure it could be leveridged if more efforts, if his efforts were complemented by what may be happening or may not be happening in the industry that could happen. You know, I find that's the key thing right now, is the co-ordinated approach is what's lacking. And we're, as a smaller jurisdiction, we have an easier way of doing that than, you know, again Ontario, Quebec or B.C."*
>
> *"… but I would suggest that if that something is to materialize, that it not be—that it be a result of a very consultative process with the industry, and you could have something there. Because there's a lot of examples to--the problem often lies when something is proposed or without that proper consultation because the devil's in the detail. It's that little point that didn't seem to be a big deal beforehand, when it's realized a year in, when the law's in, changing a law is a long process once it's been adopted and then you're not--you just don't want us to open for that change, you never accepted the law in the first place and you fall back in that debate and then you're not better off. So if you're going to put something in place, it got to be very consultative."*

In addition, Ms. Rowe of the Community Services Council observed:

> "*And if government agree to sit on that committee, then presumably it's at least a statement that there is some interest in trying to--I mean, at the moment when anybody raises these issues, it's outsiders coming in saying we've got a problem. Whereas, if we could get this collective committee with each of the three partners indicating that they're willing to look at this, then you have a slightly different situation, I think, where there's a little bit of a willingness being stated that this is not just blowing in the wind, but rather that we're looking for some of the solutions."*

With regard to the need for monitoring, as evidenced in this report, there has been a great deal of work undertaken in relation to the insurance industry in recent years. This work has engaged numerous stakeholders including individual insurance companies, brokers, regulators, industry associations, and groups representing consumers. These initiatives involve work which is either completed, in progress or being developed and have resulted largely from concerns shared by all stakeholders relating to the last hard market. Some of these initiatives have been highlighted in this report and are summarized below:

IBC

- Strategic Information Steering Committee of senior industry executives to examine the issue of data collection. This group is examining various data collection models and will be reporting its recommendations to IBC's Board of Directors in 2006.
- Tort Reform Working Group is examining various tort reform options in conjunction with the voluntary sector. Report is due to be released in May 2006.
- Regulatory Balance Steering Committee is examining various approaches to insurance industry supervision and regulation in Canada.
- Market Availability Task Force intended to "*…to facilitate discussions between the insurance industry and representatives from other industries and market segments, particularly small business and the volunteer sector – groups which have experienced problems in obtaining coverage."*
- Ongoing initiatives as a result of the recommendations of the Atlantic Task Force, including a series of workshops aimed at certain sectors to be held around the region.

CCIR

- Currently working jointly with the industry to develop a risk-based market conduct supervisory model to improve public policy outcomes. Model is currently in development stage and is focussed on system stewardship.
- In conjunction with the Canadian Insurance Services Regulatory Organizations (CISRO) released a paper entitled, Managing Conflicts of Interest: A Consultation Paper on Enhancing and Harmonizing Best Practices. This paper is currently out for comments.
- Pilot of a complaint mechanism that has been implemented in July 2005 by the regulators in Ontario and Quebec with intention of having it available across the rest of the country in 2007.

IBAC

- In a news release dated March 7, 2006 IBAC and CFIB announced that both organizations have agreed to work together to present a united voice on issues affecting both small businesses and insurance brokerages. The stated goal is "*…to work together on a series of initiatives that will hopefully improve our joint ability to cope with the next hard market, and strengthen the small business and insurance brokerage communities."* As a first step IBAC has agreed to work with the CFIB on a joint handout that will answer questions about insurance products, how the industry determines pricing, how the industry works in cycles, and the subsequent impact on all consumers.

In addition to the above initiatives industry representatives spoke to a commitment to try to stabilize rates by “smoothing the underwriting cycle”. This means effectively that in soft markets insurers will not cut rates and accept risks that they would not otherwise accept with a view to gaining market share only to increase rates and drop those risks in a hard market.

With respect to the industry driven initiatives, IBC noted:

> *“I think there’s a real attempt this time to do things differently. There will be another cycle that will see prices harden and so on, but I think there’s a real hope that it won’t be quite as difficult for everybody involved as the last one. Because I think the last one really has fundamentally changed our industry. It’s put us in places where we never were before, and somewhere we never want to go again. All that being said, we’ll see if it did change.”*

The Board acknowledges that there has been a significant response to the last hard market and there are a number of initiatives that have been undertaken nationally, regionally and provincially that may assist in addressing both homeowners and commercial insurance issues in this Province. That being said, there is no need to “reinvent the wheel” in the future and every effort should be made to build upon and complement work in place so as not to duplicate the allocation of scarce resources to address the same or similar issues. It is equally true that the effectiveness of many of these initiatives have not yet been tested and there has been no apparent concerted effort by the industry to look at these initiatives in a coordinated manner. The challenge in the Province should be to examine industry market trends on a continuing basis, evaluate how any available solutions may combine to address provincial issues and concerns and only implement new initiatives/solutions where required to satisfy unmet consumer needs. In this way, the competitive marketplace in Newfoundland and Labrador will be least affected by provincially targeted solutions.

Furthermore, given the diversity of opinion on particular issues and solutions, especially between the industry and the Consumer Advocate, as well as the notable difficulties which were experienced involving data collection and profitability analysis during this review, the Board is of the opinion that directed discussion and consultation among the parties is needed if there is any expectation of resolving contentious issues and bridging positional gaps.

The Board submits that appropriate collaboration, coordination and monitoring is critical to a successful implementation plan.

7.6 The Delivery System

Three options are presented below for consideration in terms of a responsible and accountable delivery system for implementing solutions/initiatives contained in this review. The first two of these models were referred to by the Consumer Advocate in relation to his consumer assistance initiatives. Both these options are expanded to encompass the broader range of initiatives which may be implemented, while a third option is put forward by the Board for consideration.

Insurance Review
Implementation Delivery Options

	Expansion of Current Services Framework	New Brunswick Model	Sectoral Insurance Council
Entity	The Consumer and Commercial Affairs Board of the Financial Services Regulation Division, Department of Government Services	Consumer Advocate for Insurance & Act. Funded through industry assessments	Sectoral Insurance Council comprises insurance industry, Government and sectoral representatives
Responsibility	- consumer enquiries and complaints - general information and education - solvency, statistical plans and audit responsibilities re: auto insurance	- examine underwriting practices and report to Superintendent of Insurance - conduct investigations on premiums and availability - responses to information requests - develop and conduct educational programs - conduct investigations directed by Legislature	-promoting dialogue on insurance issues amongst industry, Government and sector stakeholders - monitoring industry trends and updating activities - recommending implementation initiatives - fostering education, training and information exchange, eg. sector tool kits
Comments	- alternative for consumer complaints and mandated oversight may also rest with the Public Utilities Board - other similar models were noted by Consumer Advocate, primarily in U.S.	- Consumer Advocate may be charged with additional responsibilities similar to Sectoral Insurance Council.	- may begin as a voluntary sector initiative only comparable to Alberta
Analysis	- integration with existing regulatory operations - one stop shopping - Government driven, closest to 'status quo' - question of infrastructure and resource requirements	- new initiative, 'middle of road' option - focused on consumer - funding through industry assessments as in New Brunswick - Government driven, may be difficult to deliver on expectations	- proactive, focused and directed on broader insurance issues. - strategic initiative - stakeholder driven - optimizes opportunities for collaboration, coordination and monitoring - resource and funding support may be an issue

The Board notes that these delivery systems are not necessarily mutually exclusive and may be considered in combination. For example, a Consumer Advocate for insurance could be appointed as part of the existing services framework or in support of the Sectoral Insurance Council option.

The delivery system to be relied upon for implementation will likely depend on the extent to which initiatives will be acted upon resulting from this review and the role Government and other stakeholders may wish to play respecting implementation. Because of the lack of consensus among the stakeholders the Board acknowledges there are no straightforward or easy solutions to the implementation choices arising from this review. The Board does suggest, however, that these choices be made not with a view to the softened conditions in the current marketplace but with the prospect of worsening conditions that will undoubtedly be faced by insurance consumers in the next hard market.

8.0 MARINE INSURANCE

8.1 Background

8.1.1 Introduction

The Terms of Reference require the Board to:

- *"Report on issues which maybe raised with respect to the accessibility and availability of marine insurance.*
- *Report on possible reasons for high loss ratios and year to year variations."*

The objective of the Board in this review of marine insurance was to listen and report the views of stakeholders in relation to accessibility and availability concerns and particularly to document reported underlying reasons for the level and variability of loss ratios in the Province. Throughout the course of the review, however, the Board received input on a variety of other marine insurance matters which are also reported on below. The Board was also proactive in initiating discussions/interviews with specialists in the marine insurance field. This dialogue along with specific initiatives proposed by the Consumer Advocate is reflected in the report to address some of the marine insurance issues raised.

8.1.2 Definition

Marine insurance covers a diverse range of risks and involves a wide range of coverages. Marine insurance coverages are primarily:

- Ocean – divided into Hull, Cargo and Liability policies. Special tailor-made policies may include specialized equipment such as offshore drilling rigs and oceanographic exploration.
- Inland – Property or liability coverage related to vessels used to transport, goods in transit, projects under construction, and some of the largest completed structures in the world.

Also covered by marine underwriters are piers, cargo awaiting distribution, storage buildings and vessels, floating casinos situated on barges, vessels used for pleasure cruises, tours and excursions, passenger ferries. Newer tankers are larger and faster than their older counterparts and are insured under unique policies as they are much more expensive with more specialized equipment and carry previously unheard of cargo such as liquefied natural gas. In addition to the standard coverage of Hull, Cargo and Liability, Pollution and "trade disruption" coverage is available. Policies may also cover injuries to passengers and crew.

8.1.3 Market Structure

The marine insurance product is generally supplied in the context of an international marketplace. While there are some Canadian companies in this sector most insurers offering coverage in the Province are international companies with operations all over the world. These companies are not regulated either federally or provincially like automobile insurance or even to the same extent as homeowners or commercial insurance. Within this context detailed information in relation to the market structure is not available.

With the cooperation of industry participants in this review the Board was able to gather some information as to the significant brokers and insurers in this market sector. Based on the available information, there are twenty active Canadian writers of marine insurance operating in Canada. According to industry participants in this review, there are a number of brokers and underwriters offering this coverage in this Province. The Board was advised of at least eleven resident brokers offering coverage directly through underwriters or through non-resident brokers. At least sixteen underwriters were identified with three or four providing the majority of coverage in the Province and most being non-resident companies.

According to the Office of the Superintendent of Insurance direct premiums written in this Province in 2004 for marine insurance total $6,152,000. This figure does not include all insurance written in this Province, as information in relation to a number of significant insurers was not captured. It is notable that this level of premiums is only 1.3% of the total direct premiums written for all forms of insurance in Newfoundland and Labrador, and 0.02% of the total net premiums written in Canada in 2004. Direct premiums written in Canada for marine insurance for 2004 make up less than 2% of the total insurance written ($238,820,000 for marine vs. $12,418,142,000).[57]

To better understand the size of the marine insurance market in the Province it is useful to look at the number of fishing vessels registered. Boat registration in Canada is basically a title system for the ownership of boats, similar in nature to the title systems applicable to land registry. According to the Transport Canada web site [www.tc.gc.ca] registration is mandatory under the *Canada Shipping Act* for every commercial ship that exceeds 15 gross tons. The Transport Canada web site provides a List of Ships Statistics for each of the past three years, classified by size, by use, by province and by type of vessel. Smaller ships, which are also included in the statistics, may be registered on a voluntary basis. Licensing is required under the *Canada Shipping Act*, Small Vessel Regulations for all commercial vessels less than or equal to 15 gross tons and for all recreational vessels under 15 gross tons and powered by an engine at least 10 horsepower.

As of January 3, 2006 there were 46,119 vessels on register in Canada.[58] Of these 1,851 or 4% were registered in Newfoundland and Labrador; 1,552 were fishing vessels and an additional 161 were non-fishing commercial vessels. Of the remaining 138 vessels in the Province, 12 were government vessels and 126 were pleasure craft. Although regulations state that registration is mandatory for every vessel that exceeds 15 gross tons, 409 of the 1,851 vessels registered in Newfoundland and Labrador do not exceed this limit and were therefore voluntarily registered. Fishing vessels made up approximately 43% of the total number of vessels registered in Canada. Fishing vessels in Newfoundland and Labrador comprise 83.8% of the total complement of

[57] Canadian Underwriter Statistical Issue, June 2005, p. 50 & p. 73
[58] According to the latest information available on Transport Canada's web site: http://www.tc.gc.ca/MarineSafety/Ships-and-operations-standards/registry.htm

vessels registered provincially and represent 3.3% of the total number of vessels registered in Canada. These figures have changed very little since 1989.

8.2 Review of Loss Statistics and Related Documentation

In order to comment on the possible reasons for the high loss ratios for marine insurance and the year-to-year variations the Board researched several sources and publications to determine the actual loss ratios for the past number of years.

8.2.1 Transportation Safety Board of Canada

On its website the Transportation Safety Board of Canada [59] presents a statistical summary of marine occurrences for Canada, divided by region, for each year from 1989 to 2004. Included in the reports are the numbers of shipping accidents, the types of vessels involved, the number of vessels lost, and the number of fatalities. The charts show that in 1989 there were 1,013 incidents involving Canadian vessels. Of these, 113 or 11.2% occurred in Newfoundland and Labrador. In 1995 the total number of incidents had decreased by 31% to 698, while in Newfoundland and Labrador the number had decreased by 40% to 67. In 2004 the total number, including Newfoundland and Labrador occurrences, was 441, an overall decrease since 1989 of 56.5%. In Newfoundland and Labrador the number of occurrences during that year was 73, an overall decrease of 35.4%. Those figures include the number of fishing vessels that were involved in accidents.

The table below provides a comparison of marine accidents in Canada and in the Province for various selected years between 1989-2004.

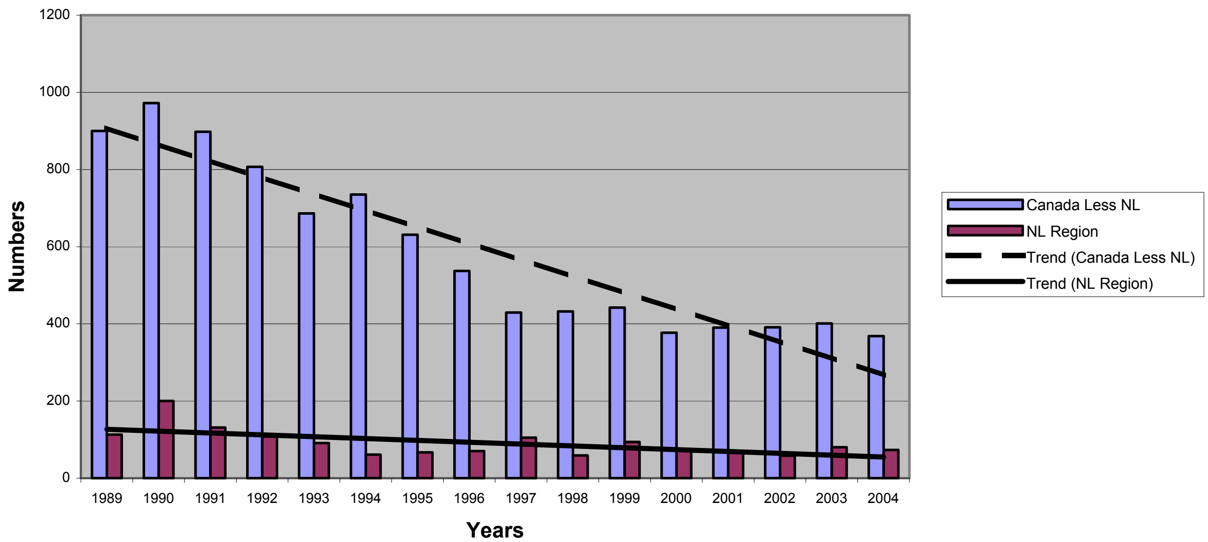
Marine Accidents 1989 - 2004 (Selected Years)			
	Total Marine	**Newfoundland and Labrador Marine**	**% of Total**
1989	1013	113	11.15%
1995	698 (31%)[1]	67 (40%)[1]	9.60%
2000	450	73	16.22%
2004	441 (56.5%)[1]	73 (35.4%)[1]	16.55%[2]

[1] Decrease from reference year 1989
[2] Newfoundland and Labrador 4% of registered vessels and 16.6% of marine accidents
Source: Data from Transportation Safety Board of Canada

On the following page is a chart showing the total number of shipping accidents, including fishing vessels, for each year from 1989-2004 by the Newfoundland and Labrador region and for Canada less Newfoundland and Labrador. The second chart on the following page isolates the number of fishing vessels that were involved in accidents during this same period. The number of Canadian occurrences in both charts does not include Newfoundland and Labrador vessels.

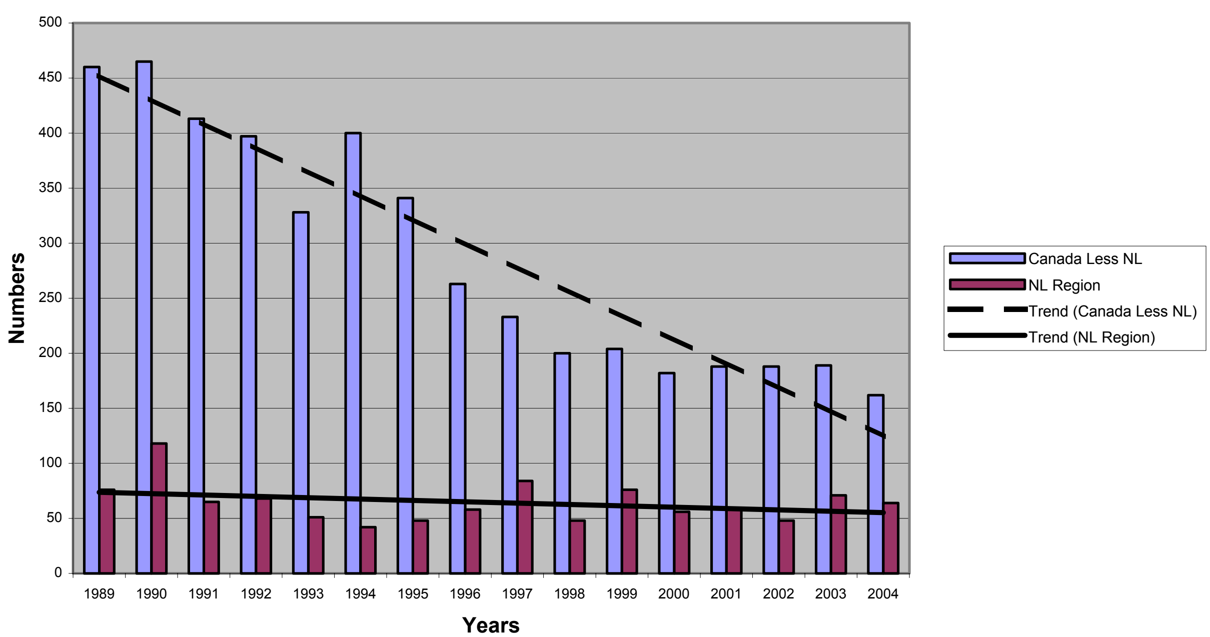
[59] http://www.tsb.gc.ca/en/stats/marine

Shipping Accidents
1989 - 2004



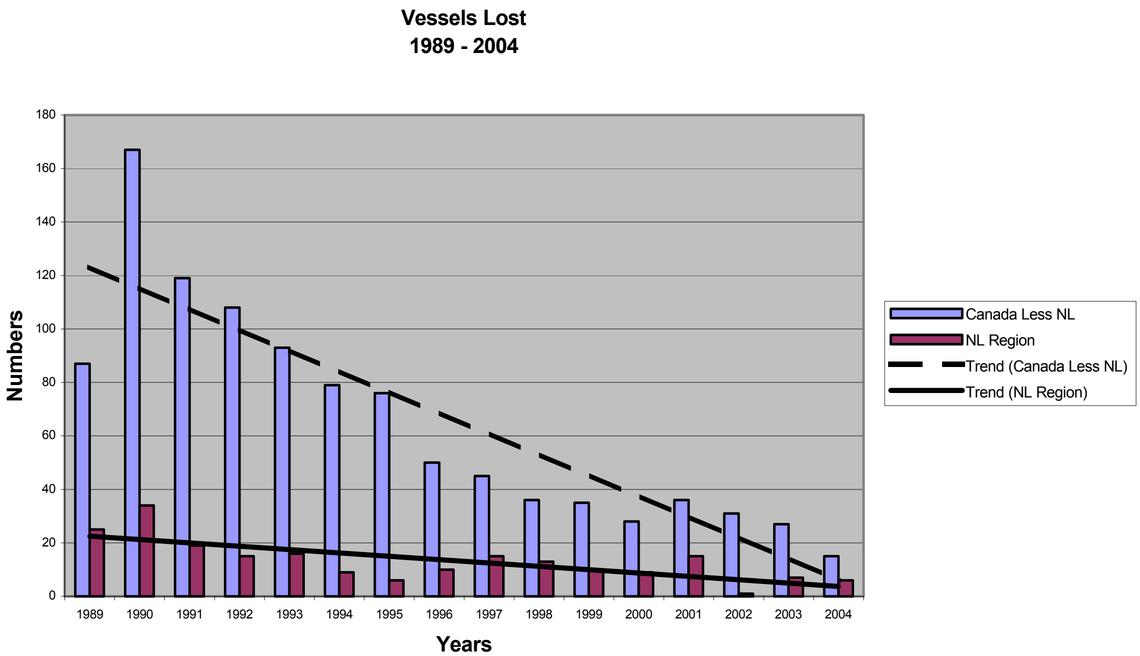
Source: Data from Transportation Safety Board of Canada (http://www.tsb.gc.ca/en/stats/marine)

Fishing Vessels Involved In Accidents
1989 - 2004

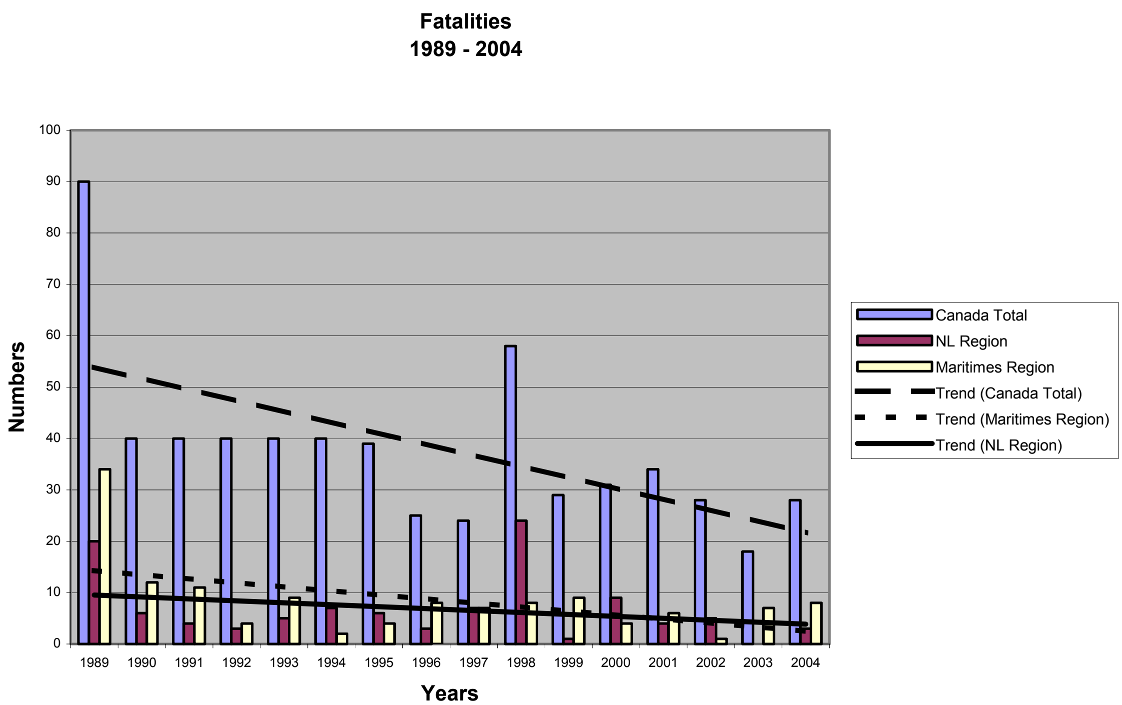


Source: Data from Transportation Safety Board of Canada (http://www.tsb.gc.ca/en/stats/marine)

The charts below show the number of vessels lost in Canada and in the Province, and the number of fatalities in Canada, the Maritimes and in Newfoundland and Labrador.



Source: Data from Transportation Safety Board of Canada (http://www.tsb.gc.ca/en/stats/marine)



Source: Data from Transportation Safety Board of Canada (http://www.tsb.gc.ca/en/stats/marine)

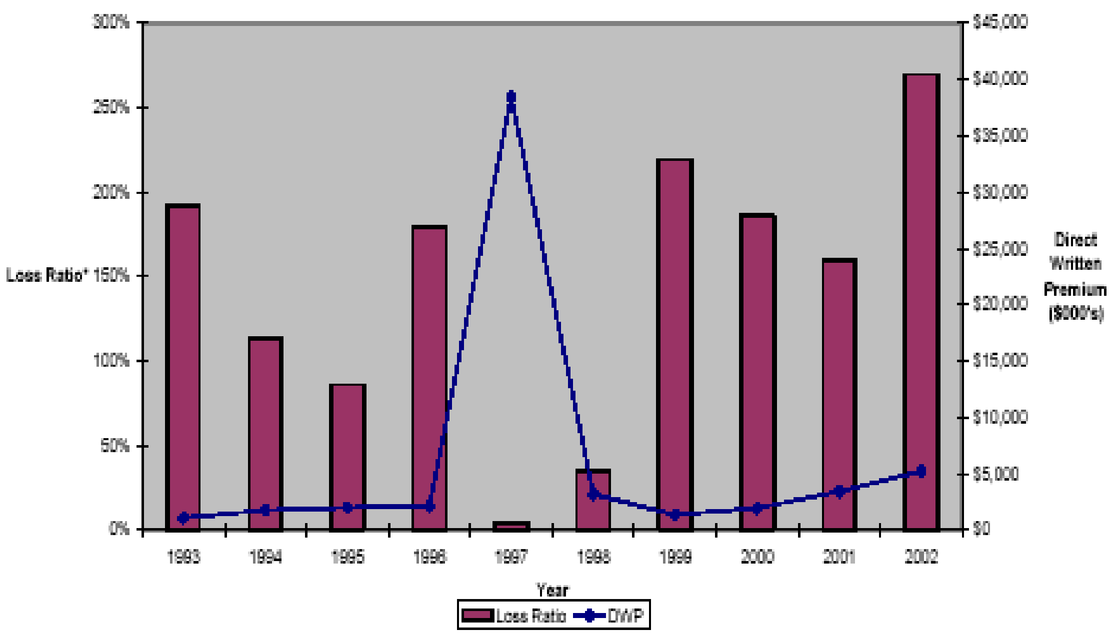
The number of vessels lost, which includes all types of registered vessels, has shown marked improvement when looking at only the years 1989 and 2004, with an 81.3% decrease overall for all of Canada, and a 76% decrease for the Province.

The number of fatalities has also decreased. On a Canada-wide basis, if one considers 1989 an anomaly, the number of fatalities has decreased by 38% from 40 in 1990, to 28 in 2004. For those same two years, Newfoundland and Labrador experienced a decrease of 50%, from 6 to 3, while the Maritime Region experienced a decrease of 33%, from 12 to 8.

8.2.2 Mercer's 2004 Report

In its 2004 report Mercer also reviewed the loss ratio history in the Province for marine insurance for the 10-year period 1993-2002. It found that the average loss ratio over the 10-year period was 144%, from a high of 270% in 2002 to a low of 4% in 1997. The average loss ratio over the 5-year period from 1998 to 2002 was 174%.

Province of Newfoundland and Labrador
Marine
All Industry



* Loss Ratio is calculated as Direct Losses incurred divided by Direct Earned Premium
Source: Mercer's 2004 report to Government

The estimated profit margins based on the very volatile loss ratio history and an expense ratio assumption by Mercer of 35% ranged from a high of 62% in 1997 to a loss of 143% in 2002. The average estimated profit margin for the 10-year period was a loss of 46%, while the average for the final 5 years of the review was a loss of 69%.

Based on certain assumptions, Mercer concluded that insurance companies have suffered losses on marine insurance. Due to the unique characteristics of marine insurance, Mercer recommended that a special study be conducted into this insurance product.

8.2.3 Premiums and Loss Experience

Each year Stone & Cox Limited, a Canadian insurance publisher, compiles and publishes the experience of the industry showing Direct Premiums Written, Direct Premiums Earned and the percentage Loss Incurred based on the annual statements filed with the provincial and federal Governments, as reported to Stone and Cox Limited. The information provided is set out by class of business, by company and by province.

The experience of the companies reporting marine business in Newfoundland and Labrador for the years 2000 to 2004 is set out below:

Marine Insurance
The "BROWN CHART" Provincial Results[1]
2000 - 2004

	Direct Premiums Written	Loss Ratio Incurred
2000	1,861,000	170.19%
2001	3,397,000	138.19%
2002	5,185,000	215.75%
2003	5,518,000	89.92%
2004	6,151,000	43.23%

[1]Source: Stone & Cox Limited

According to the information compiled by Stone & Cox Limited direct premiums written in the Province for marine insurance has increased in each year since 2000, and has increased by just over 330% in the years from 2000 to 2004. The loss ratios have varied in each year however, from a high of 216% in 2002 to a low of 43% in 2004.

8.2.4 Fishing Vessel Insurance Program

The Fishing Vessel Insurance Program (FVIP) was put in place in 1953 by the Federal Government to provide insurance to vessels that private firms would not insure. The program was reviewed a number of times starting in 1965, but in its 1988 audit report the Auditor General of Canada made mention of a number of deficiencies in management practices along with the failure to resolve certain problems. According to the report on the 1992 audit, performance had continued to deteriorate since 1988.[60] Section 2.149 of the 1992 Audit Report talks about the program's viability:

[60] 37th Parliament, 2nd Session, Standing Committee on Fisheries and Oceans, Wednesday, May 7, 2003. [http://ww.parl.gc.ca/committee/CommitteePublication.aspx?SourceID=33790 accessed online March 20, 2006]

> ***"2.149 Viability of the Plan.*** *Overall, the financial and business situation of the Plan has deteriorated since 1988. The number of vessels insured has declined by 25 percent and the value insured has dropped by more than 40 percent. Over time the Plan has had surpluses and deficits on operations; however, it has had a growing annual deficit on operations for the last three years, reaching $2.4 million in 1991-92 or over a third of premiums collected. Finally, the operating expenses as a percentage of premiums collected have also increased since 1988-89 to reach their maximum at 48 percent of revenue in 1991-92. While average premiums received per thousand dollars insured have remained relatively constant since 1985-86, average indemnities paid per thousand dollars of insurance written have risen sharply in the last three years."*

In August 1992, according to the comments attached to the 1992 report of the Auditor General, there was a plan developed to deal with the deficiencies identified. This, however, appears to have been unsuccessful as the FVIP was discontinued in 1995.

8.2.5 Fishing Vessel Safety Review

In November 2000 Maritime Search and Rescue (SAR) of the Department of Fisheries and Oceans Canada (DFO) completed a report on fishing vessel safety for Newfoundland and Labrador.[61] The review concerned vessels of under 65 feet and used a comprehensive collection of data, including that of SAR and DFO fisheries data.

Although the report did recognize the shortcomings of its trends and patterns as a result of insufficient data, lack of access to specific data, and the resulting inability to establish accurate cause and effects, it concluded that, in 2000, the SAR incident rate and the number of fatalities indicated a real cause for concern in the fishing industry. It also found that the root cause was not simple, but that it involved a combination of many elements fundamental to safety, even listing a number of deficiencies that had been identified by Transport Canada – Marine Safety and private insurance surveyors. It did note that a review of available literature highlighted a commonality regardless of the jurisdiction in which the fishery is carried out, and that is "…the inherent risk…" that is compounded "…through normal human behaviour." It recognized the need for a suitable safety regime and the need for the implementation of prevention programs through education and enforcement, but it found that, at that time, the Small Fishing Vessels Inspection Regulations, which did not include vessels not exceeding fifteen gross tons, left a void with regard to fishing vessels of this size.

The report set out 10 recommendations regarding regulations, the delivery of prevention programs, investigations, fish management, intra-departmental co-ordination, training and education standards, further study and a response regime to SAR incidents. It did note, however, that the recommendations are similar to those in previous reports, and that, even though there had been significant change in the industry, many have remained valid and relevant.

[61] Maritime Search and Rescue Newfoundland Region Fishing Vessel Safety Review (less than 65 feet), November 2000, [http://www.safetynet.mun.ca/pdfs/CFVSafetyReview.pdf] ,pgs. 17-22.

8.3 Impact of Federal Legislative Amendments

8.3.1 Canada Shipping Act

On March 1, 2001 Bill C-14, *The Canada Shipping Act, 2001*, received first reading in the House of Commons. It was intended to reorganize, update and streamline the *Canada Shipping Act*. The Bill covered a wide range of marine topics, including: safety issues (ship operations and equipment, crew certification, conditions of work, navigation, accident investigation, salvage and wreck), the environment and other matters. Under Bill C-14 all non-pleasure craft would have to be registered with Transport Canada, and all would be subject to the same enforcement scheme. Administrative penalties would be used, except in cases of more serious offences, to encourage and promote compliance with regulatory requirements. Bill C-14 received Royal Assent on November 1, 2001 and became Statute 2001, c. 26. However, with the exception of several sections relating to the *Shipping Conferences Exemption Act*, 1987, it continues to await proclamation by an order of the Governor In Council.[62]

The legislation sets the minimum safety standards that must be maintained by operators of Canadian vessels. One requirement for fishermen is the completion of Transport Canada Safety Course before April 2007. These courses address emerging tasks such as putting out a fire and inflating a life raft. These courses are offered through the Marine Institute in a number of locations. The Marine Institute reports that delivery is based on demand which has been steadily increasing. According to a recent CBC news story on March 27, 2006, more than one third of fishermen have yet to take this safety course.[63]

8.3.2 Marine Liability Act

In an effort to simplify the *Canada Shipping Act*, and to consolidate existing marine liability regimes into a single piece of legislation the *Marine Liability Act*, Bill S-2 was introduced in the Senate in January 2001. This bill, which re-enacted various provisions with revisions to give effect to various Supreme Court of Canada decisions, also included several new regimes concerning shipowners' liability to passengers and apportionment of liability applicable to torts governed by Canadian maritime law. The *Marine Liability Act* invalidated waivers of liability and associated regulations required all operators to maintain minimum levels of liability insurance. These provisions were problematic for the adventure tourism industry in Canada, which actively sought amendments. One amendment did exempt non-motorized and inflatable hull vessels but other types of passenger vessels used in this sector were not included. A bill to exempt these other vessels as well as other recreational activities has since been introduced but is not yet proclaimed.[64]

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[62] Information on Bill C-14, *The Canada Shipping Act*, http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/summarie/s/c14-e/pdf , [accessed March 20, 2006]
[63] CBC, website: http://www.cbc.ca/nl/story/print/nf-fish-safety-20060327, [accessed March 28, 2006]
[64] Information on Bill S-2, *The Marine Liability Act*, [http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E&Chamber_N&DtartList=A&EndList=Z&Session=9&Type=0&Scope=I&query=2707&List=toc-, accessed March 23, 2006]

8.4 Submissions, Presentations and Comments

8.4.1 Consumers

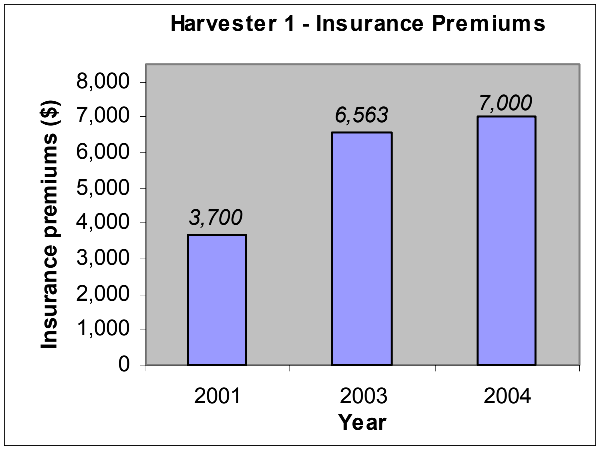
The Fish, Food and Allied Workers (FFAW/CAW) represents approximately 20,000 working men and women in the Province, primarily in the fishing industry. Its members operate and crew approximately 4,500 commercial fishing vessels, which are directly affected by the cost and availability of marine insurance. The FFAW/CAW provided a written submission to the Consumer Advocate and a panel made a presentation to the Board.

The issues identified in the written presentation included:

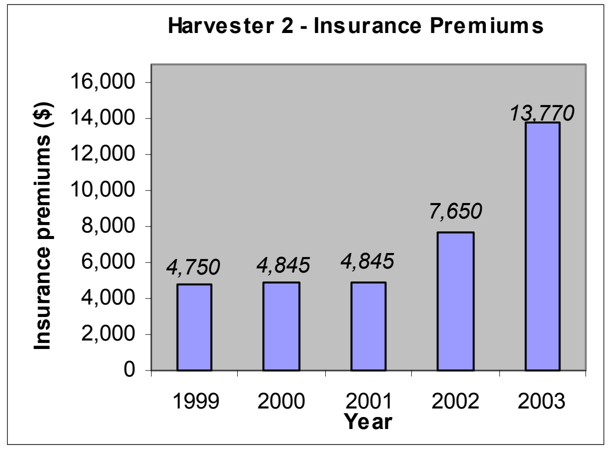
1. The effect on harvesters of large increases in insurance rates, with no apparent relationship between rates charged, individual claims history and risk management efforts;
2. Coverage restrictions and huge deductibles which result in harvesters being uninsured, underinsured or unable to claim for losses; and
3. A lack of competition in the fishing vessel insurance marketplace, which, in Newfoundland and Labrador, is supplied by two large insurers who dominate the market and one relative newcomer that insures only larger enterprises.

To illustrate the impact on rates charged to harvesters, the following charts were provided by the FFAW/CAW:

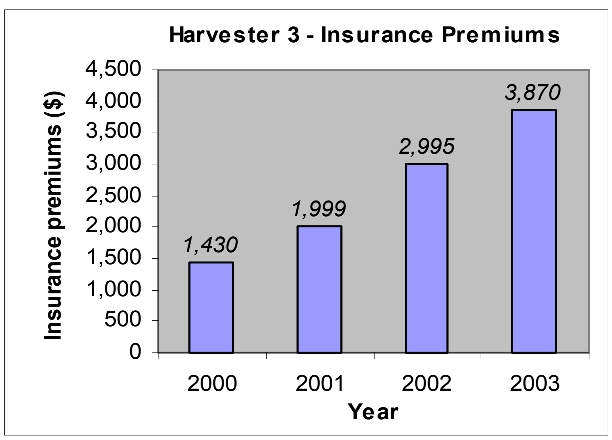
Year-Over-Year Comparisons of Insurance Premiums of Four Newfoundland and Labrador Fishing Vessels



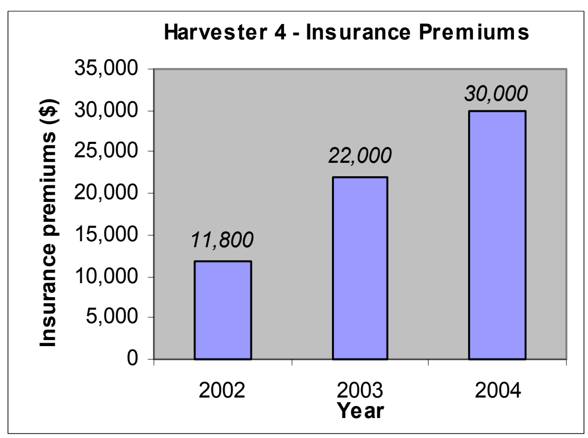
Harvester 1: 44 ft vessel, no losses in last five years, four year old vessel. Insurance premiums increased **89%** from 2001 to 2004.



Harvester 2: 62 ft vessel, no losses in last five years, 27 year old vessel. Insurance premiums increased **190%** from 1999 to 2003.



Harvester 3: 36 ft vessel, no losses in last five years, 14 year old vessel. Insurance premiums increased **171%** from 2000 to 2003.



Harvester 4: 64 ft vessel, no losses in the last five years. Insurance premiums increased **154%** from 2002 to 2004.

In its presentation to the Board on January 20, 2006 the FFAW/CAW spoke of the existence, prior to 1995, of the Fishing Vessel Insurance Plan provided by the Federal Government. It was this plan, the FFAW/CAW believes, along with private insurance companies, that ensured the availability of adequate coverage and afforded *"some stability over the years in the vessel marine insurance field for us."*

Since the termination of that plan it was suggested by harvesters that the presence of only two major players in the market does not give them the advantage of competition, or of choice when it comes to obtaining adequate insurance. The FFAW/CAW indicated:

> *"...people that tried to move then from one to the other ... have to get a rate quote from another company and were refused to quote a rate because they were already insured with one company... So…it was very clear there was no competition in the field at all."*

It was explained that the situation changed slightly when, in 2005, as a result of the work of the FFAW/CAW with a local broker, a new insurer began writing marine insurance in the Newfoundland and Labrador market. Initially this company was only writing policies for $500,000 or greater; however policies of $300,000 are now written. The presence of an additional insurer has reportedly resulted in lower rates due to increased competition. The FFAW/CAW illustrated one example of changes: *"…our insurance ... went from $14,000 in 2001 to $23,000…in 2002, to $35,000 in 2003 and then ... last year this new company came on and we ... went from $35,000 to a 30% reduction to $24,500."* It was added, *"What's interesting about that is that ... premium went down because ... switched insurance companies, but ... premiums went down and he stayed with the same insurance company."*

Despite the recent improvement in rates for some classes of users, harvesters requiring policies of under $300,000, which account for a large number of enterprise owners, continue to experience high rates. As the FFAW/CAW stated, *"…larger boats are realizing significant savings that the smaller boats are not…"*. At the same time harvesters continue to be burdened with high deductibles that prevent them from making claims except in cases of catastrophic loss. The FFAW/CAW explained that:

> *"…if you were prosecuting a fishery where ice was involved ... at the very minimum it was probably a $200,000 deductible, and the worse case scenario was that if you were at fisheries that involved ice, that you'd get no insurance at all… when you go at these fisheries, if you incur a loss, you're on your own at it. The best case scenario was it'll be a $200,000 deductible, which was basically the same thing, anyway. You had $200,000 damage before you could make a claim."*

It was suggested that harvesters want to *"…find the right balance between the deductibles and the effect that that's going to have on your premiums."*

In the meantime, in order to meet their need to go further offshore, it was explained that harvesters were acquiring new vessels that:

> *"…were much safer than what we had in the past…We would have thought that by increasing the safety factor, especially with the equipment that's on these new vessels today for life saving, fire fighting, CO_2 systems, that our insurance should have stayed the same and not increased…we're taking on this big debt load, that at least someone would have realized … they got lot safer boats now this day and age than what they had back in '98, '99, and 2000, and …we're increasing the insurance on them, why, when it probably should have went down lower."*

Harvesters also believed that other jurisdictions with competition were not faced with the same problems. The FFAW/CAW stated:

> *"…in terms of Nova Scotia, New Brunswick, and PEI they never had the same problem…There were other parties that were involved and there seemed like there was more competition there. There were parties that were involved…if you had to take N's … boat…and try to insure it here in Newfoundland, and you took that same boat and if he …fished out of Quebec and insured it in Quebec … a couple of years ago would have been less than half what he was paying here in Newfoundland… So they don't seem to have the same problems in Quebec or Nova Scotia."*

The FFAW/CAW, on behalf of its members, feels that there *"has to be room for government to play a role here.*" It asks that:

> *"…government at least be able to look into this and determine in terms of …the comments of fishermen, the case that they were bringing forward, the fact that…they felt there was basically cooperation, or whatever between companies to, you know, keep rates high. You know, the lack of competition between the two, the fact that one would refuse to quote rates on the other, and the fact that somebody could look at it and look at their earnings, the loss ratio, and …is this totally getting out of whack or is there some reasonable level that these rates should be at, or if things could be done."*

The FFAW/CAW also commented that:

> *"…to be told that, there's nothing we can do, there is no avenue to look at, you know, marine insurance is outside the avenue of anything we can look at, we don't have any power to deal with it, in our view, wasn't good enough."*

In talking about the *Marine Liability Act*, Hospitality Newfoundland and Labrador raised concerns about the possible negative impact of new Federal legislation under the *Canada Shipping Act*, and how this legislation could have had disastrous implications for the adventure tourism industry. According to Hospitality Newfoundland and Labrador *"…the act was brought into place really by the Federal Government … to deal with the shipping industry and vessels that perform upon water, not realizing that would encompass canoes, kayaks, rafting … all these things, and then the level of insurance and the level of coverage that you would need to make sure you're adequately or your guests were covered would be astronomical."* Provinces with huge investments in the white water rafting industry, kayaking and canoeing, such as Alberta and

British Columbia, came together to form a committee that hired a lawyer to represent their interests. It was out of this co-operation that a risk management plan was born.

In an e-mail comment to the Board the owner of a 12-passenger sailing charter vessel that operates for approximately 60 days during the summer reported that he had decided to terminate his business as a result of annual insurance costs of $3,400. He stated that: *"Out of those 60 days of operable season the return is too small and the traffic cannot bear sufficient increases in fares to justify such inflated insurance rates."* He goes on to say that *"…the insurance sector is in cahoots with Transport Canada safety requirements that yearly grow more expensive to place on vessel and, by the way are of questionable value."* In his correspondence he also referenced a Transport Canada requirement for a new radio and radio course for small commercial vessels that cost approximately $1,500.

Another e-mail comment from a sailboat owner described his experience with obtaining insurance. He stated that his sailboat was insured with a company for 10 years but this company no longer writes policies in the Province. He noted: *"As a result my sailboat insurance, which I paid $268.00 for in 2003 now will cost me $1200.00 + and I've only been able to get one quote on insurance even though I've contacted all the major companies in the province."*

8.4.2 Insurance Industry

In an effort to identify the issues concerning the availability and affordability of marine insurance in Newfoundland and Labrador, the Board spoke with two brokers, one with a significant book of marine insurance business in the Province and another which no longer offers the product in the Province.

The Board also had discussions with a representative of the Canadian Board of Marine Underwriters, an Ontario based organization open to underwriters that write marine business in Canada and are domiciled in Canada. Not all marine insurers in Canada are members. It is currently made up of twelve members, although its numbers have been as high as twenty. The association represents the Canadian industry, participates in discussions with government on issues as they relate to marine insurance, and liaises with the International Union of Marine Insurance.

During these discussions with industry participants, a number of issues which had also been raised in the context of the homeowners and commercial insurance review were raised. Issues such as availability, rates, deductible, losses and risk management were discussed in this context as set out below.

<u>Availability</u>

Despite the difficulties expressed by fishermen in Newfoundland and Labrador, industry representatives did not seem to feel that availability was an issue. The Board was advised by one broker that there were seven predominant insurers plus three fringe insurers providing coverage to fishing vessels in the Province.

It was also the position of the Canadian Board of Marine Underwriters that, despite changes in the industry that saw contraction in the number of companies through amalgamation and mergers, several companies got out of the market while others stepped in to fill the void. The representative of the Canadian Board of Marine Underwriters stated: *"…there is adequate capacity to service the requirements of the industry"*, while noting however that two of the fringe markets have not been active in Canada since the devastating hurricane in the United States in November 2005.

In discussing why insurers have left the market, the Canadian Board of Marine Underwriters suggested that: *"Coverages being offered are probably much broader than should be offered."* It also noted that interest rates, and therefore investment income, have played a role in the availability of coverage. "*When interest rates were higher, there was a lot of pressure on underwriters to put business on the books to get premiums for investment purposes, which is all part of the overall package."*

The broker that no longer writes marine insurance business in the Province provided an interesting perspective**.** He explained that while he had been selling this product since the 1950's he has recently not been able to maintain a relationship with an underwriter who is willing to offer marine insurance. This difficulty likely arises from a couple of significant fire losses in relation to marine business he had placed. He reports that his clients have been able to obtain this coverage elsewhere.

Rates and Premiums

The participant broker who continues to be active in the market acknowledged that there has been some variability in rates over the years. He explained that: *"… they've been up and down. In the late '80s…early '90s they were the highest they've ever been. '95 to '97 the rates were the lowest they ever were. Then they went back up in '97 to 2004. The last two years rates have gone down again."* He pointed out several reasons for the variability:

1. In the late 1980s and early 1990s *"…we were having a lot of losses then. Part of that could be attributed to the cod moratorium and that type of thing."*

2. When product prices are low, fishermen have fewer dollars to spend on maintenance: *"…you spend less money on maintenance, then you're inevitably going to have breakdowns, you're going to have problems which will end up being an insurance claim."*

3. The marine insurance industry in Newfoundland and Labrador, and even in Atlantic Canada, generates a small percentage of the total net premiums in Canada. For that reason *"…you aren't going to have that many more companies scrambling to write the business because just the sheer amount of income that's available…there's only a certain premium base there. There are only so many boats."*

4. Newer boats are bigger and more expensive. Clients expect insurance savings because of the improvements to boats and don't always understand that the increased value of the boat means increased risks and therefore increased costs. In today's terms *"...to insure a million dollar fishing boat in the Province of Newfoundland will cost you between 20 and 25 thousand dollars…all the coverages on your automobile insurance are…$1,000.00/$1,500.00 in Newfoundland right now if you have a new car. So marine insurance, it isn't that high priced, but it's just that the boats are so high priced nowadays."*

5. Some wharves now require that fishing vessels carry as much as $2 million liability insurance in order to tie up to that wharf. In addition in recent years the ownership of wharves had been transferred from the Federal Government to private harbour authorities that are partially funded by the Federal Government, with the remainder recovered from the fees charged to the users of the wharves. In the event that damage results from the use of the wharf, harbour authorities sue boat owners to recover the damages.

6. The required liability insurance extends to the removal of the wreck in the event that a boat burns in the harbour. In a recent example *"...our removal of wreck costs are going to be in excess of $100,000."*

7. There is uncertainty in dealing with the *Marine Liabilities Act*. It is *"...starting to affect the fish boat side of things…the changes that are going to be made to the Marine Liabilities Act…putting more responsibility on the owners."*

8. The cost of construction and of repairs in Newfoundland and Labrador is higher than it might be in another province: *"...the raw material is all imported…those all have to be transported to Newfoundland, so your freight costs just to get the raw materials there to build the boats are higher… And we find that to do a similar repair job in Newfoundland compared to in Nova Scotia or New Brunswick or Prince Edward Island you can add on 25 to 35 percent more of the repair costs."*

9. The seasonality of the fishing industry in Newfoundland and Labrador does not lend itself to lower premiums. The impact of ice on shrimp fishing boats causes risk to be higher in policies where ice is not excluded. The existence of an off-season, which on the surface would appear to lower risk, brings its own unique characteristics, *"...the Province of Newfoundland and Labrador has more large fire losses in the off-season when the boats aren't fishing, so I can't go to my underwriter and say ... you should give this guy a break, he only fishes four months of the year because they know that over the last five years there have been four and a half million dollars worth of boats burned up at the wharf in the off-season."*

10. The coverage provided until 1995 by the Fishing Vessel Insurance Program, although perceived by fishermen to be less expensive and more available, offered a *"…bare bones plan, no additional perils coverage which covers these floodings of engine room…their policy was almost just a total loss insurance policy to protect lienholder. They offered no P and I coverage, no liability coverage at all."*

11. The cost of insurance has been affected by the returns on the investments of the insurance companies: *"…a good part of their money they've made over the years they've made off their investment income. The investment markets aren't what they used to be. Unfortunately, now policy holders have to pay for it, and that's you and I and everybody else."*

The Canadian Board of Marine Underwriters commented on the rates and on the profitability of marine insurance by saying that: *"If I say why people left, I'm saying because generally it's not been profitable, even with the rates going up in the past five years, which they have done. I think it's levelled off, but there was a time when rates were quite inadequate. Coverage was probably broader than should have been and made available. I think probably right now you're at a balance of pricing and coverage that it can be a class of business that can be profitably written."* While rates are currently 50 to 100 percent higher than they were five years ago, it is believed that, at the current time, *"…generally stability is there. There's no doubt that there's been a contraction in recent years, but I think underwriters are now ready to do business in Canada."*

The cycles that affect the profitability of the industry, according to the Canadian Board of Marine Underwriters, also affect the insurance provided to the fishing industry: *"Fishing vessels goes in cycles big time. I guess the reason you're doing this study is there's not as many people writing fishing vessels and there's reasons for it, the least of which is it hasn't proven to be a profitable class of business from an underwriting point of view."*

The Canadian Board of Marine Underwriters does not agree with reinstating the Fishing Vessel Insurance Plan observing, *"Well, I think you'll have to tap into your taxpayers to fund this. You'll be subsidizing the whole process. Insurance right now is provided adequately to the fishery. I think that pricing, notwithstanding what certain individuals may think, I think the pricing is still fairly competitive, and I think the product is fairly good."*

<u>Deductibles</u>

The use of deductibles as a means of reducing insurance costs is an option open to some owners who can afford to sustain a certain portion of any loss that occurs. In general, according to the broker active in the marketplace, the industry determines the deductible by applying a certain percentage, ranging from one percent to three or four percent, to the total insured value. He explained that this policy has been in effect for some time: *"That's pretty standard since I've been at it since '78. It hasn't changed a lot. The only driving force that's changed it is that as fishermen get higher-valued boats…"* However, he explained: *"Some owners agree to self insure for a larger percentage to reduce their insurance costs."*

The Canadian Board Marine Underwriters felt that generally deductibles have gone up. It was stated that: *"...quite often I believe there's some movement towards higher deductibles on machinery damage and/or limitations on coverage, which is one way to address the problem."* The impact of court rulings on losses and on the replacement of machinery that was damaged as a result of negligence is significant. Higher ice deductibles in the sealing industry were also noted. In those cases the insurer: *"...would probably only provide coverage if it can get a substantially higher deductible."* It was explained that: *"...you're intentionally going into ice, it shouldn't be the insurer paying for the damage, it should be you."*

Losses Affecting Rates

The broker active in the marketplace estimates that the profit on insurance provided to fishing vessels, on average over the past five years, has been in the range of 5 to 6%. It was pointed out that insurance operates in a global market and that most insurance companies must purchase reinsurance. For that reason many large losses that are attributable to natural disasters such as hurricanes can directly impact the cost of local insurance. It was also explained: *"So the reinsurance industry is hard hit. The reinsurance industry is increasing their rates, and they're going to pass that along to the primary insurers and the primary insurers, if they want to keep their profitability at the same rates, they're going to have to pass that along to you and I, the insurance consumers."*

In this global market significant losses were incurred in the month of March 2006 with three large marine disasters. One of these was the loss of a ferry in British Columbia, which was, according to one broker, *"...insured for probably $70 million"*. In addition to the loss of property there was an unfortunate loss of life. Another loss mentioned occurred in Cameroon, off the coast of Africa, where a ferry, insured for roughly $100 million, was lost. Once again there was loss of life. The largest of the three, the loss of a large container vessel owed by Hyundai Shipping, is expected *"...to come in between $350 million to $500 million."* Also included in the losses that will affect the cost of reinsurance, and therefore insurance, will be the effects of the three hurricanes that took place in 2005. According to the broker *"...those are going to be billions of dollars that's going to be lost there. And a good part of that will be marine losses because in the City of New Orleans was one of the largest ports around…a lot of the stuff in the port would have been marine insurance risks."*

Recent loss experience in Newfoundland and Labrador was also raised. The broker notes: *"...you've had two considerable disasters in Newfoundland which have resulted in loss of life ... the Ryan's Commander ... two years ago and then this fall you had the loss of the Melina Keith".* The "*Ryan's Commander*" was a new boat less than a year old, while the "*Melina Keith"* was an older boat that had been refitted for use in other fisheries. Other significant losses in the past four years which were referenced were the loss of the *"McKenzie's Dream*", a three year old fishing boat valued at *"in excess of a million dollars*" that caught fire and had to be abandoned, and two other vessels experienced construction weaknesses and began to take on water. One of these, valued at $1.5 million, was saved through the training and actions of the crew, but, *"... that one topped out at almost half a million dollars to repair."* The other, which was tied to the wharf, was prevented from sinking by the prompt response of the owner, but repairs "…*cost underwriters there a quarter of a million dollars."*

In talking of the losses that have affected the overall state of marine insurance, the representative from the Canadian Board of Marine Underwriters mentioned three large Newfoundland and Labrador vessels that have gone down in waters off the Province over the past eight years: the "*Ketsheshuk"*, which sank off Labrador about four years ago, which *"…was almost a $15 million loss"*, the "*Fame"*, and another large fish processing vessel. It was pointed out that after those losses "…*probably three or four significant writers decided that that was enough*" and left the market.

Risk Management

The broker active in the market observed that there are a number of risks that are inherent in the fishing industry, and that underwriters evaluate these risks when setting rates. It was explained that *"…what most underwriters do, they divided Atlantic Canada into these various fishing zones and they say…over a five, ten-year period, what are the losses that occur in these various fishing zones and for these various types of fisheries."* Considered in these evaluations are *"…climate and weather conditions and fishing seasons…"*. The need to go further offshore to fish, the effect of ice on boats involved in the shrimp fishery, as well as in the sealing industry were also raised. From his experience in the industry, the broker made the following observations concerning needed improvements that would serve to lessen the risks under which fishermen operate:

1. It is especially important that appropriate testing be done on fishing vessels, particularly on those of new design. In discussing two recent losses, he said: *"…the problems with both those boats were the same. They were both built, certified by the Coast Guard Ship Safety to go fishing, but they never had their stability tests and their stability booklets certified and they never had their stability books approved."* When he inquired into why this had happened, he was told by personnel of the Transportation Safety Board that: *"…the Federal Government has cut back on the number of employees. We don't have enough people to check these stability books, to do these tests on these new designs of boats that are coming out. We can't delay the boats, the man's built himself a million and a half dollar boat, he's ready to go fishing, we give him a temporary certificate saying we'll get the stability work done on it when … our staff get time to, but … we're understaffed. They're actually three years behind in doing these stability tests on these new designs that are out there."*

2. Training in marine safety, fire fighting, vessel stability, and in other related areas was essential. He stated: *"… they're building these new boats…they're bigger and better than what they were five or ten years ago and they're bigger and better because the fishermen are having to go further offshore to fish, they're fishing in more inclement weather than they ever fished in before…. the Federal Government introduced a training program for all these fishermen to train them on safety and train them on different things. Two years ago I was at a meeting [in] Baie Verte and the government people there said*

they're five to seven years behind in training fishermen." Fishermen appear to be willing to take this training, especially during the off-season, however due to lack of funding the courses have not been made available to them.

3. Federal requirements are reported to sometimes be a problem. *"You've got fishermen in Newfoundland going too far offshore in too small a boat*." He explained that the restrictions on length have caused fishermen to build boats *"…almost three stories high now…"* and *"…that affects stability."* He went on to say that *"…you're going to have more disasters in Newfoundland unless somebody convinces the feds that this magic length of 64 feet 11 inches has to be changed to suit the climate and the environment that these guys are fishing in."*

4. There are inadequate shore power systems to maintain boats during the off-season: *"they're not designed for what they're being used for and they tend to short out and either through the design fault with the heater or through a fault with the shore power outlet they're plugged into and you end up with huge losses in Newfoundland."*

5. The Newfoundland and Labrador boat building industry, and the fishermen who purchase boats, would benefit from the implementation of a program of best practices, quality control, product liability insurance, training and focus on safety, similar to that being provided by the Nova Scotia Boat Builders Association, a provincially funded organization. Since, *"…you don't have anything of that nature in Newfoundland…the boat yards over there are building everything to minimum Coast Guard standards. Minimum Coast Guard standards don't cut it."* An added benefit is that builders who belong to the Association, and thereby adhere to its standards, are eligible for a 10 to 15 percent discount on their insurance rates.

The Canadian Board of Marine Underwriters agreed that boats should be inspected. It stated: *"After a certain number of years … they're all licensed or registered, but that's not good enough. Generally, you want a condition valuation survey by an independent surveyor, which the underwriter would have confidence in. That would normally be paid for by the ship owner, it would normally be a requirement before you could even get insurance."* Later saying: *"I don't think there's adequate controls by the Federal Government in standards of the vessels and maintenance of the vessels and so forth."*

8.4.3 Consumer Advocate

In his February 17, 2006 written submission the Consumer Advocate reiterated the importance of risk management and called for the investigation of reasons for the loss ratios. He commented on the role of Government as follows:

> "*The ability of the Province to legislate in the area of Marine Insurance is necessarily curtailed. Marine Insurance, though a matter related to property and civil rights has been constitutionally attributed to the federal parliament as an integral part of its jurisdiction over shipping and navigation (see for example Insurance Community Triglaw Ltd. V. Terrasses Jewellers Inc. [1983] 1 S.C.R. 283). Marine Insurance is governed by the federal Marine Insurance Act, 1993, c.22.*
>
> *That said, it should be determined whether the current market is competitive. If it is not competitive then a public policy response is obviously required to address the issue so that consumers are protected.*"

In his April 6, 2006 submission the Consumer Advocate highlighted the concerns of the fishing sector with regard to marine insurance. These are:

1. The lack of competition, exorbitant rate increases, excessive deductibles and unreasonable restrictions on vessel insurance coverage. Harvesters felt that rates were low and stable from 1995 to 2000, after which, because there were fewer insurers in the market, rates began to rise, deductibles increased dramatically, and competition disappeared.

2. A perceived dominance in the marketplace by two companies, which was ameliorated slightly in 2004 by the entry, at the encouragement of the FFAW/CAW, into the market of one other company. Since the arrival of this third insurer, insureds with vessels of $300,000 or more in value have had access to a different insurer, which has resulted in a decrease in premiums and greater stability in rates, while others are left without this insurance option.

3. Underinsurance of enterprises by harvesters in order to afford the premiums.

4. No insurance being carried by harvesters because of lack of affordability.

5. Claims not being made by harvesters because of exorbitant deductibles and the risk of higher premiums.

6. Inadequate recognition by insurers of risk management measures being taken by harvesters.

7. The "vulnerability" of harvesters to future increases in insurance rates as well as to restricted availability.

The Consumer Advocate also reviewed the available information, as presented in Mercer's 2004 report and in the Brown Charts, on loss ratios and the fluctuations that have occurred in those ratios. He pointed out that: *"The relatively small marine insurance premium pool can be significantly impacted by even one total loss of a modern fishing vessel such as is presently being used to prosecute the crab fishery. It is not uncommon for these vessels to be worth in the area of $1 to $1.5 million dollars."*

He again recognized the authority and responsibility of the Federal Government in this area: *"It must also be recognized that the constitutional authority to regulate marine insurance in Canada rests with the Federal Government."* He went on to say that: *"Also solely within federal jurisdiction is the authority to regulate with respect to the inspection and certification of vessels and marine liability generally, both areas which have a direct bearing on marine insurance loss experience and premiums."* He does suggest that on a provincial level *"…we can seek to influence the situation"* and makes a number of recommendations relating to improved availability and reduced costs.

8.5 Board Comments

While the Board was not asked to identify solutions to the issues raised with respect to marine insurance there were a number of recommendations identified by the stakeholders participating in this aspect of the review. Many of these suggestions and recommendations were raised in the context of discussions about the high loss ratios and, as such, may be useful in future considerations of marine insurance issues.

Industry representatives suggested that premiums for marine insurance have stabilized and that prices reflect risks. However, there may be isolated problems due to local circumstances or the impact of events globally, such as the hurricanes in the Gulf of Mexico and other recent significant marine losses, that will affect marine insurance premiums negatively as re-insurers seek to recoup the cost of their losses.

Another factor to be considered is that the constitutional authority to regulate marine insurance generally rests with the Federal Government. The Federal Government, through Transport Canada, also regulates the inspection and certification of vessels and marine liability generally. Given these two factors any discussion of mechanisms to address losses in the marine industry in this Province will necessarily have to involve the Federal Government.

During the review of marine insurance much of the discussion focused on the need to minimize insurance claims and losses in this sector in order to achieve more affordable premiums. There have been large losses in this Province, primarily in the fishing sector, and these losses have contributed to the rising cost of premiums. As the Consumer Advocate pointed out, while there may be limits to the ability of the Newfoundland and Labrador Government to influence pricing and availability of the marine insurance product, ways to influence the situation can be sought.

The following suggestions were put forward by the Consumer Advocate for consideration:

- Transport Canada should ensure that the Transportation Safety Board's recommendations with respect to vessel stability testing are adhered to and implemented on an immediate basis. These recommendations were made as part of the ongoing investigation of the Ryan's Commander incident. This recommendation was put forward by the Consumer Advocate but also raised by the industry in discussions with the Board.

- A risk management program should be developed in conjunction with industry and the vessel owner/operator sector. The Consumer Advocate suggested that, *"The Marine Institute of Newfoundland and Labrador could be tasked by Government to work with insurers and the vessel owner sector to develop a risk management course that insurers would recognize and which operators and crews could avail of either on campus or through an in-service program so that participants could achieve a certificate in risk management. The course could also provide information as to the ways and means for insureds to become 'best in class' as an insurance risk and to reduce the risk of losses and claims. The risk management education should address the fishing, tour operator, pleasure craft and commercial fleets."*

- The Consumer Advocate also suggested that the Provincial Government immediately call upon the Federal Government to re-establish the Fishing Vessel Insurance Program. This program would increase availability for those who cannot purchase insurance in the regular market.

- The implementation of a Consumer Assistance program as proposed for the other insurance products would also benefit marine insureds, according to the Consumer Advocate. This program would help in resolving complaints or inquiries, identify options for hard to place risks, provide advice and information, and liaise with the marine insurance brokers on behalf of insureds.

- A mechanism should be put in place to collect data relating to marine insurance premiums in the Province to increase transparency and provide information to the sector on premiums being charged. The Consumer Advocate suggested that in conjunction with the FFAW/CAW a representative sample group of fishing vessel owners could provide data on a yearly basis as to their insurer and premium, which could be posted on a website for access by the public.

- The Consumer Advocate also suggested that the elimination of the additional taxes on insurance products in this Province would also help address the affordability problem faced by marine insureds.

As noted above these suggestions are highlighted here to provide an indication of the kind of options that may be considered in addressing the problems of availability and affordability faced by marine insureds in this Province, and in particular for owners and operators of fishing vessels.

While these suggestions may not be supported by all the stakeholders they are examples of approaches that can be considered. While it appears that premiums have stabilized somewhat marine insurance premiums in this Province are affected significantly by the high loss experience in this Province compared with other jurisdictions. Given that the premium base is relatively small, the impact of these losses when combined with other events nationally and globally is significant. As evidenced by the circumstances of the broker who reported difficulty finding an underwriter of this product, the market is sensitive to changes in loss experience which can have immediate and dramatic impacts on availability. Any examination of mechanisms to reduce premiums and improve availability for this sector will have to focus first on improving the safety and training levels of operators and crews, and also addressing the issues raised by the Transportation Safety Board with respect to the safety and stability of the vessels themselves. While there may not be immediate reductions in premium levels, actions in these areas should result in fewer losses and in the long run enhanced competition and lower premiums.

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LIST OF EXHIBITS

EXHIBITS	DESCRIPTION
1	Listing of: (a) Presenters/Meeting Participants (b) Written Comments Received
2	Homeowners Insurance Review Information: Data Requested May 2005 and Summary Responses Exhibits 2(a) - 2(i) inclusive
3	Commercial Insurance Review Information: Data Requested May 2005 and Summary Responses Exhibit 3(a) – 3(m) inclusive
4	Industry Codes: (a) Insurance Bureau of Canada i. Code of Consumer Rights and Responsibilities, and ii. Industry Commitment to Website Consumer Disclosure (b) Insurance Brokers Association of Canada i. Principles and Practices for the Sale of Products and Services by Property and Casualty Insurance Brokers
5	Consumer Advocate - A Proposed Homeowners Insurance Bill of Rights for Newfoundland and Labrador
6	Consumer Protection Practices in Canada and United States
7	Insurance Brokers Association of Newfoundland (IBAN) - A Plan for Homes in Downtown St. John's and Other Hard to Place Homeowners Risks - November 2005
8	Consumer Assistance Models

Insurance Review
Presenters/Meeting Participants

Public Meetings

The Consumer Advocate held public meetings in various centres throughout the Province on June 8th (St. John's), June 13th (Marystown), June 14th (Gander), June 15th (Corner Brook) and June 16th (Happy Valley-Goose Bay) and resulting from these meetings made a submission to the Board.

Presenters/Meeting Participants

Homeowners Insurance

(i) Roundtable Discussions

	ORGANIZATION	NAME	DATE
1.	Consumer Advocate	Thomas Johnson	November 25, 2005
2.	Insurance Bureau of Canada (IBC)	Norman Whalen, Q.C. Don Forgeron	November 25, 2005
3.	Insurance Brokers Association of Newfoundland	Craig Dowden Tom Hickey	November 25, 2005
4.	Aviva Insurance Company of Canada	Jennifer Power	November 25, 2005
5.	Johnson Inc. Insurance	John Thompson	November 25, 2005

(ii) Written Submissions

1.	Consumer Advocate	Thomas Johnson	November 16, 2005 January 4, 2006
2.	Insurance Bureau of Canada	Norman Whalen, Q.C.	November 17, 2005 December 21, 2005
3.	Insurance Brokers Association of Newfoundland	Craig Dowden Tom Hickey	November 17, 2005

Commercial Insurance

(i) Presentations

	ORGANIZATION	NAME	DATE
1.	City of St. John's	Linda Bishop Betty Clarke David Blackmore	December 21, 2005
2	Royal Canadian Legion	Elizabeth Casey Bill Titford Eugene Breen	January 19, 2006
3	Beverage Association of Newfoundland and Labrador	Marcel Etheridge	January 19, 2006
4	Fish, Food and Allied Workers (FFAW/CAW)	David Decker Nelson Bussey Glen Winslow Sherry Glynn	January 20, 2006
5	Hospitality Newfoundland and Labrador	Stan Cook	January 20, 2006
6	St. John's Board of Trade	Mark King Ken Birmingham	January 20, 2006
7	Imagine Canada	Connie Berry	January 20, 2006
8	Community Services Council Newfoundland and Labrador	Penelope Rowe	January 20, 2006

(ii) Follow-up Meetings

1.	Hospitality Newfoundland and Labrador	Stan Cook	March 8, 2006
2.	Canadian Federation of Independent Business	Stephane Robichard Bradley George	March 8, 2006
3.	Beverage Industry Association of Newfoundland and Labrador	Marcel Etheridge	March 10, 2006
4.	Community Services Council Newfoundland and Labrador	Penelope Rowe	March 13, 2006
5.	Canadian Risk Intervention Inc. and Risk and Insurance Management Society (RIMS)	Craig Rowe	March 15, 2006

Commercial Insurance

(iii) Roundtable Discussions

	ORGANIZATION	NAME	DATE
1.	Consumer Advocate	Thomas Johnson	March 17, 2006
2.	Insurance Bureau of Canada	Norman Whalen, Q.C. Don Forgeron Jane Voll Gary Kapac	March 17, 2006
3.	Insurance Brokers Association of Newfoundland	Craig Dowden Bob Dunne	March 17, 2006
4.	Aviva Insurance Company of Canada	Gita Kinstlers	March 17, 2006
5.	Atlantic Insurance Company Limited	Dave Woolley	March 17, 2006
6.	Royal & SunAlliance Insurance Company of Canada	Pat McNally	March 17, 2006

(iv) Written Submissions

1.	Consumer Advocate	Thomas Johnson	March 24, 2006
2.	Insurance Bureau of Canada	Norman Whalen, Q.C.	March 24, 2006
3.	Insurance Brokers Association of Newfoundland	Craig Dowden	March 24, 2006

Marine Insurance

(i) Meeting (Conference Call)

	ORGANIZATION	NAME	DATE
1.	Fairway Insurance Services	Dan Swansburg	April 4, 2006
2.	Canadian Board of Marine Underwriters	Gordon Gibbons	April 4, 2006
3.	Crosbie Job Insurance	James Crosbie	April 11, 2006
(ii) Written Submissions			
1.	Consumer Advocate	Thomas Johnson	April 9, 2006

Insurance Review
Written Comments Received

	NAME	ADDRESS	DATE RECEIVED
Homeowners Insurance			
1.	FC	Mount Pearl	January 7, 2005
2.	KC	Witless Bay	June 7, 2005
3.	GT	Unknown	June 8, 2005
4.	VH	Harbour Grace	June 13, 2005 October 28, 2005 January 3, 2006
5.	LM	St. John’s	June 27, 2005
6.	MK	St. John’s	June 30, 2005
7.	EL	Paradise	June 30, 2005
8.	VMcD	Goulds	January 10, 2006
Commercial Insurance			
1.	HB	Gander	January 17, 2005
2.	EC	St, John’s	February 2, 2005
3.	NMcG	St. John’s	June 7, 2005
4.	FK	Unknown	June 10, 2005
5.	JD	St. John’s	June 29, 2005 February 2, 2006
6.	MK	St. John’s	June 30, 2005
7.	PB	Deer Lake	June 30, 2005
8.	CB	Ottawa	June 30, 2005
9.	DD	St. John’s	April 6, 2006
Marine Insurance			
1.	MM	Gander	January 18, 2005
2.	JC	St. John’s	April 4, 2006

NOTE: ***1. Persons initials and general address used to protect confidentiality of personal information.***
2. The Consumer Advocate also received written comments which were filed with the Board as part of his Written Submission(s).

Homeowners Insurance Review
Information and Data Requested May 2005

The participating insurers in the Board's request for data and information included the top nine insurers (by premium volume) in the Province based on information on file with the Superintendent of Insurance. These nine insurers had total direct written premiums for personal property insurance in 2004 of $56,699,000 more than 85% of the homeowners insurance market in the Province.

Information Requested

In May of 2005 the Board sent a series of questions to each of these nine insurers with respect to certain detailed financial and underwriting information. The information requested included:

1. A schedule detailing direct premiums written and direct claims paid (including claims expenses) for each of the last ten years.
2. A schedule showing annual average base rates for each coverage for each of the last ten years, and the percentage changes for each year.
3. An explanation of whether rates are based on the IAO suggested rates and to what extent have scheduled ratings been used.
4. A schedule showing the profit for this line of business in the Province for each of the last ten years.
5. Copies of current policy wording for Standard, Broad Form and Comprehensive policies, rating manuals, and underwriting guidelines with all supplemental directives.
6. A list of geographic areas, particular coverages, and exposures or risks where the company will not provide coverage or the rates that are offered are significantly higher than average (examples may include properties in downtown St. John's, heritage homes, properties with oil tanks or wood stoves, and properties in particular areas of the Province). In relation to these coverages companies were asked to provide:
    a. Any specific underwriting rules, guidelines, directions, manuals;
    b. The percentage/number of refusals, cancellations or terminations for the last five years;
    c. A rate history for each of the last ten years in comparison to other properties;
    d. The loss results/ratios for the last ten years in comparison to other properties.

A summary of the responses of the companies to each of these questions is attached.

The Board cautions readers of this report with respect to the use of the summarized information contained herein. As noted above approximately fifteen percent of the market or approximately thirty insurers were not canvassed. Given the technical and complex nature of the insurance product and the information sought it was not possible to reliably capture and summarize all information relevant to the issues raised. While the summaries attached may generally represent the circumstances of a majority of the industry in the province details important to a comprehensive understanding of the issues were not available.

Homeowners Insurance Review
Summary*

Question 1 **A schedule detailing direct premiums written and direct claims paid (including claims expenses) for each of the last ten years.**

All but one company was able to provide this information which has been summarized in the attached spreadsheet.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Homeowners Insurance Review
Premiums and Claims (000)
Summary of Information Supplied*

	2004		2003		2002		2001		2000		5 YEAR TOTAL	
	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED
Company 1	$10,088	$5,275	$8,074	$4,095	$6,173	$3,755	$5,598	$4,004	$5,214	$4,108	$35,147	$21,237
Company 2	$13,112	$5,268	$11,916	$6,742	$10,992	$6,432	$9,968	$9,884	$9,725	$4,221	$55,713	$32,547
Company 3 **												
Company 4	$2,191	$958	$2,171	$936	$1,933	$943	$1,899	$824	$1,823	$1,193	$10,017	$4,854
Company 5	$3,086	$783	$1,799	$691	$1,297	$407	$1,054	$1,110	$733	$925	$7,969	$3,916
Company 6	$1,981	$591	$1,781	$1,330	$1,535	$489	$571	$185	$66	$82	$5,934	$2,677
Company 7	$6,583	$2,793	$5,698	$2,261	$4,924	$2,261	$4,414	$3,275	$3,933	$1,593	$25,552	$12,183
Company 8	$1,322	$683	$1,341	$443	$1,369	$378	$1,111	$246	$525	$399	$5,668	$2,149
Company 9	$12,673	$5,287	$11,926	$6,799	$10,048	$4,689	$8,198	$8,405	$7,926	$4,549	$50,771	$29,729
	$51,036	$21,638	$44,706	$23,297	$38,271	$19,354	$32,813	$27,933	$29,945	$17,070	$196,771	$109,292
LOSS RATIO	**42.40%**		**52.11%**		**50.57%**		**85.13%**		**57.00%**		**55.54%**	

* - Company numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.
** - This company did not provide the requested information. Gave comments on what should be provided but failed to provide any information.

Homeowners Insurance Review
Summary*

Question 2 **A schedule showing annual average base rates for each coverage for each of the last ten years, and the percentage changes for each year.**

Most companies were able to provide premiums and percentage changes for five years. A spreadsheet summarizing the available data is attached. It should be noted that the data relates only to base rates and does not reflect other important items such as coverage changes, policy type, policy wording, discounts and surcharges. As noted on the spreadsheet two companies were not able to provide any information.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Homeowners Insurance Review
Annual Base Rate Changes
Summary of Information Supplied*

	2004 PERCENT CHANGE	2003 PERCENT CHANGE	2002 PERCENT CHANGE	2001 PERCENT CHANGE	2000 PERCENT CHANGE
Company 1 **	3.30%	4.19%	3.69%	2.45%	
Company 2	12.55%	13.29%	6.45%	4.68%	-1.79%
Company 3 **	7.46%	8.68%	8.88%	3.12%	
Company 4 ***					
Company 5	13.19%	13.14%	15.13%	2.09%	9.80%
Company 6	10.14%	7.89%	0.77%	-0.51%	-3.45%
Company 7 ****	2.09%	2.45%	2.51%		
Company 8 *****					
Company 9 ******	0.00%	0.00%	0.00%	0.00%	0.00%
EARNED PREMIUMS - COMPANIES RESPONDING (000	$45,921	$40,056	$34,329	$27,551	$11,212
EARNED PREMIUMS - TOTAL MARKET (000)	$66,602	$62,631	$58,151	$53,211	$52,267
PERCENTAGE OF MARKET RESPONDING	68.95%	63.96%	59.03%	51.78%	21.45%

* - Company numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

** - This information was not available for the year 2000

*** - This company does not have base rates. Market conditions dictate premium levels.

**** - This company could not provide the information for the years 2000 and 2001

***** - This company was unable to provide the requested information as it has not been kept historically

****** - This company's rates have not changed since 1997

Homeowners Insurance Review
Summary*

Question 3 **An explanation of whether rates are based on the IAO suggested rates and to what extent have scheduled ratings been used.**

Company 1	Company does not use IAO rates. Rates for the habitational lines of business are reviewed annually based on internal company data, and rate changes are made as necessary. Company attempts to minimize the need for rate increases through loss prevention programs.
Company 2	All personal property rates are based on projected loss experience and comparison of rates with competitors. Rates are based on the IAO suggested rates or scheduled rating.
Company 3	Rates are not based on IAO suggested rates. All Homeowners policies are based on internally developed rates.
Company 4	Company's rates are not IAO based. Use scheduled rates nearly 100% of the time. There are very few exceptions.
Company 5	Based on rating structure, company loss experience and industry loss trends. Even with the poor underwriting result in 2001, rates only increased by 3.7% the following year.
Company 6	Rates are not, nor have they been based on IAO suggested rates at any time within the past ten years.
Company 7	Residential Homeowner's rates are not IAO based.
Company 8	Do not use IAO suggested rates.
Company 9	Company is not a member of IAO.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Homeowners Insurance Review
Summary

Question 4 **A schedule showing the profit for this line of business in this province for each of the last ten years.**

Most of the companies were able to provide most of the information for five years. Since on an individual company basis some of the information may be considered to be sensitive, a summary spreadsheet setting out combined totals and averages was prepared. It should be noted that the information contained in the spreadsheet was derived based on a number of assumptions and may contain inconsistencies arising from the unique characteristics of the operation of each company. This combined with the fact that not all companies participated fully means that the spreadsheet information may not reflect actual industry profitability. See the attached spreadsheet.

Homeowners Insurance Review
Homeowners / Personal Property Financial Information (000)
Summary of Information Supplied

	Earned Premiums	Claims Incurred	Expenses & Commisions**	Investment Income**	Weighted*** Average Return on Investment	Net Income Before Income Taxes	Income Taxes**	Other Items	Net Income	Weighted*** Average Return on Equity
2000	$32,412	-$20,834	-$11,392	$1,471	4.92%	$1,657	-$669	$0	$988	2.72%
2001	$34,056	-$29,758	-$12,042	$1,692	4.22%	-$6,052	$2,541	$0	-$3,511	-24.08%
2002	$39,206	-$21,191	-$14,843	$1,993	2.73%	$5,165	-$1,679	$0	$3,486	11.67%
2003	$44,773	-$23,472	-$16,165	$1,249	2.94%	$6,385	-$2,287	$0	$4,098	17.84%
2004	$50,643	-$22,230	-$18,647	$2,350	2.89%	$12,116	-$4,356	$0	$7,760	29.51%
Total for Period	$201,090	-$117,485	-$73,089	$8,755	17.70%	$19,271	-$6,450	$0	$12,821	37.66%
Average	$40,218	-$23,497	-$14,618	$1,751	3.54%	$3,854	-$1,290	$0	$2,564	7.53%

* - This summary was developed from data supplied by insurers that represent an average of 75.7% of the Hmoeowners' Insurance market for the five years given.

** - These figures generally involve allocations by insurers of overall amounts to province and line of business

*** - These figures are weighted based on Earned Premiums. Not all insurers provided these figures and the weights are based on those participating.

In the calculation of the Weighted Return on Investment, three companies did not provide the information necessary to calculate this figure.
These companies represented an average of 16.1% of the total market for the five years given for Homeowners' Insurance.

In the calculation of the Weighted Return on Equity, two companies did not provide the information necessary to calculate this figure.
These companies represented an average of 4.79% of the total market for the five years given for Homeowners' Insurance.

Homeowners Insurance Review
Summary*

Question 5 **Copies of current policy wording for Standard, Broadform and Comprehensive policies, rating manuals, and underwriting guidelines with all supplemental directives.**

The requested information was provided for all companies and reviewed by the Board. As this material may contain items which are sensitive and in light of the amount of material involved the particulars are not attached.

Company 1	A copy of policy wordings and rate manual were provided.
Company 2	Current wordings and guidelines were provided. Rating manuals are not available as the work is done by computer.
Company 3	Policy wordings and rating manuals were provided.
Company 4	Policy wordings for Homeowners, Tenants and Condominium were provided. Rating manual was provided. There are no supplemental directives that would add or detract from the rating manual.
Company 5	Rate Manual, including underwriting guidelines and policy wordings was provided.
Company 6	Underwriting and Rating Manual, Underwriting guide and policy wordings were provided.
Company 7	Policy forms, rating manuals and underwriting guidelines can be supplied.
Company 8	Copy of requested wordings, rate and underwriting manual were provided.
Company 9	A copy of rates and surcharges were provided.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Homeowners Insurance Review
Summary*

Question 6 **A list of geographic areas, particular coverages, and exposures or risks where the Company will not provide coverage or the rates that are offered are significantly higher than average (examples may include properties in downtown St. John's; heritage homes; properties with oil tanks or wood stoves; and properties in particular areas of the Province). In relation to these coverages please provide:**

i) any specific underwriting rules, guidelines, directions, manuals;

Company 1	Did not provide this information.
Company 2	Do not have rates significantly higher than average for any specified risk.
Company 3	Did not provide this information.
Company 4	A request to insure a property in this area must be referred to Underwriting for approval. Goal is to spread risk in this area. Where applicable will accept a risk if not already insuring a significant number of adjacent properties.
Company 5	Did not provide this information.
Company 6	Every submission received is underwritten and considered on its own merits. There are however certain risks that are preferably not insured, including: risks in the Montague St. area of St. John's, Mobile Homes, Sewer Backup, Wood as only heat source (Wood heat installations must be up to code) and homes that are attached on both sides are subject to a 20% surcharge.
Company 7	A copy of rate manual and referral guidelines for brokers were provided. Not a rules-based company and for the most part, do not publish restrictions in manuals. Risk decisions are predicated on sound underwriting judgment and common sense.
Company 8	Geographic areas of concern would include Northern Peninsula and St. John's downtown core. The primary concern in St. John's is row housing without firewalls but if firewalls are in place and to code, the risk will be insured. No special restrictions are in place for heritage homes, however, extra effort is taken to ensure that the home has been updated and maintained properly and is insured to value. If the wood stove is the primary heat source the risk is not written.
Company 9	Underwriting rules and guidelines are contained in rate manual.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Homeowners Insurance Review
Summary*

Question 6 **A list of geographic areas, particular coverages, and exposures or risks where the Company will not provide coverage or the rates that are offered are significantly higher than average (examples may include properties in downtown St. John's; heritage homes; properties with oil tanks or wood stoves; and properties in particular areas of the Province). In relation to these coverages please provide:**

ii) the percentage/number of refusals, cancellations or terminations for the last five years;

Company 1	Do not have rates significantly higher than average for any specified risk.
Company 2	Did not provide this information.
Company 3	Did not provide this information.
Company 4	Do not have this information.
Company 5	The percentage or numbers of refusals, cancellations or terminations have not been tracked. Once the risk is written cancellations or terminations are predicated by other activity such as claims history or refusal or lack of intent on the part of the homeowner to update or maintain the property. Once written, risks are not cancelled because of the existence of an oil tank or wood stove or because it is a heritage home.
Company 6	Company does not track refusals, cancellations or terminations by risk profile as sought by this study. However, any risk(s) non-renewed would be minimal. Have not amended underwriting philosophy in recent years, and as such, have had no reason to non-renew any segment(s) of business due to any issues or concerns. Any non-renewal would have been as a result of the particular characteristics of the risk in question rather than the type of coverage or risk. Underwriting policy is to retain existing business wherever possible.
Company 7	Do not record this data. It is not available.
Company 8	Do not track the number of refusals, cancellations or terminations in these areas. However, the number is reported to be immaterial.
Company 9	Did not provide this information.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Homeowners Insurance Review
Summary*

Question 6 **A list of geographic areas, particular coverages, and exposures or risks where the Company will not provide coverage or the rates that are offered are significantly higher than average (examples may include properties in downtown St. John's; heritage homes; properties with oil tanks or wood stoves; and properties in particular areas of the Province). In relation to these coverages please provide:**

iii) a rate history for each of the last ten years in comparison to other properties; and

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Company 1	Did not provide this information.
Company 2	Did not provide this information.
Company 3	Do not have this information.
Company 4	The only available information based on rate history is in relation to surcharges for these categories of risks. A $25 woodstove surcharge was introduced in June 1998. The surcharge was expanded to all homeowners and rental property forms in May 2001. The cost of the surcharge was increased to $50 in November 2003 to reflect the increased cost of woodstove inspections. An oil tank surcharge was introduced in December 1993. No surcharges currently apply to older homes or heritage homes.
Company 5	This information is not available.
Company 6	No rate differential for geographic areas or heritage homes if risk meets the criteria. No rate differential for homes heated with oil with the exception of the introduction of a 5% discount if the tank was inside the dwelling and less than 20 years old. If a woodstove is an auxiliary or supplementary hearing unit there is a 10% surcharge.
Company 7	Do not charge an additional premium for geographic areas. If the risk meets guidelines, the rate that is charged is the same.
Company 8	Did not provide this information.
Company 9	Do not have rates significantly higher than average for any specified risk.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Homeowners Insurance Review
Summary*

Question 6 **A list of geographic areas, particular coverages, and exposures or risks where the Company will not provide coverage or the rates that are offered are significantly higher than average (examples may include properties in downtown St. John's; heritage homes; properties with oil tanks or wood stoves; and properties in particular areas of the Province). In relation to these coverages please provide:**

iv) the loss results/ratios for the last ten years in comparison to other properties.

Company 1	This information is not available.
Company 2	Did not provide this information.
Company 3	Do not track claims by postal code. Therefore, this information is not available.
Company 4	Did not provide this information.
Company 5	Do not have rates significantly higher than average for any specified risk.
Company 6	Did not provide this information.
Company 7	The number of homes insured under these four property categories is too small to provide any meaningful loss ratio statistics.
Company 8	Do not have this information.
Company 9	Unable to provide historical data for all policies which have had a woodstove surcharge in the past.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Information and Data Requested May 2005

Initially ten insurers were identified for each of commercial property and commercial liability insurance to participate in this data call. As there was some duplication of property and liability insurers a total of 13 commercial insurers participated. These insurers were the top ten by premium volume in the province for each of property and liability insurance in 2004, based on the information filed with the Superintendent of insurance, with total direct written premiums for in 2004 of:

i) for commercial property of $39,528,000 or 77.16% of the total market; and
ii) for commercial liability of $27,272,000 or 65.31% of the total market.

Information Requested

In May of 2005 the Board sent a series of questions to each of these 13 insurers with respect to certain detailed financial and underwriting information. The information requested included:

1. A list of the lines of insurance offered.
2. A schedule detailing direct premiums written and direct claims paid (including claims expenses) for each of the last ten years.
3. A schedule showing average base rates for each coverage for each of the last ten years, and the percentage changes for each year.
4. An explanation of which rates are based on the IAO suggested rates and to what extent have scheduled ratings been used.
5. A schedule showing the profit for each line of business in this Province for each of the last ten years.
6. Copies of current rating manual; and underwriting guidelines with all supplemental directives.
7. A list of particular coverages, exposures or risks where ***(Insert Company Name)*** will not provide coverage or where the rates that are offered are significantly higher than average.
8. In relation to insurance for each of liquor serving establishments, tourism/hospitality and volunteers/non-profit risks:
   i) what coverage is offered;
   ii) detail any specific underwriting rules, guidelines, directions, manuals or underwriting considerations used in assessing these risks;
   iii) the number of risks in force by year;
   iv) the percentage/number of refusals, cancellations or terminations by line by year for the last ten years;
   v) a rate history for each of the last ten years in comparison to other risks; and
   vi) the loss results/ratios for each of the last ten years in comparison to other risks.

A summary of the responses of the companies to each of these questions is attached.

The Board cautions readers of this report with respect to the use of the summarized information contained herein. As noted above approximately thirty percent of the market were not canvassed. Given the technical and complex nature of the insurance product and the information sought it was not possible to reliably capture and summarize all information relevant to the issues raised. While the summaries attached may generally represent the circumstances of a majority of the industry in the province details important to a comprehensive understanding of the issues were not available.

Commercial Insurance Review
Summary*

Question 1 **A list of the lines of insurance offered.**

Company 1	Commercial property; Commercial liability; Commercial crime; Marine insurance; and Farm insurance
Company 2	Commercial Property; Island Marine; Fidelity; Equipment Breakdown (Boiler & Machinery); Commercial General Liability; Commercial Umbrella Liability; and Commercial Excess Liability
Company 3	Federally licensed to write the following lines of insurance: aircraft, automobile, boiler and machinery, fidelity, hail, liability, property and surety. In co-operation with broker partners will create a tailored and comprehensive program of insurance coverages to address all insurance needs of the policyholder for all lines of business offered.
Company 4	Property; Casualty, and (in a very limited way) Fidelity
Company 5	Comprehensive range of commercial insurances, products including: Property; Crime; Theft by Employee; General Liability; Umbrella Liability; Excess Liability; Errors and Omissions; Directors and Officers; Commercial Automobile; Engineering Breakdown; Electronic Equipment and Warranty covers; Marine and Transportation coverage.
Company 6	Property and Boiler and Machinery
Company7	Property; Aircraft; Automobile; Boiler and Machinery; Credit; Fidelity; Liability; Surety; Marine; Accident and sickness
Company 8	Licensed for all non-life classes in Newfoundland and Labrador except title and mortgage. It is for individual underwriters to decide what, if anything, to write in these classes.
Company 9	Property Commercial; Automobile – liability; Automobile – personal accident; Automobile – other; Boiler & Machinery; Fidelity; Liability; Marine; and Accident & Sickness
Company 10	Commercial Property; Commercial Liability; and Commercial Auto
Company 11	Commercial and Industry Property and Casualty business
Company 12	Accident and Sickness; Automobile (incidental automobile fleet business only); Boiler and Machinery; Fidelity; Liability; Property; Marine; and Surety
Company 13	Property; Automobile; Liability and Accident and Sickness

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Summary*

Question 2 **A schedule detailing direct premiums written and direct claims paid (including claims expenses) for each of the last ten years.**

Most companies were able to provide premiums and percentage changes for five years. A spreadsheet summarizing the available data is attached. As noted on the spreadsheet one company was not able to provide any information.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Premiums and Claims (000)
Summary of Information Supplied*

	2004		2003		2002		2001		2000		5 YEAR TOTAL	
	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED	WRITTEN PREMIUMS	CLAIMS INCURRED
Company 1	$6,843	$7,290	$6,232	$547	$5,197	$3,612	$3,857	$2,870	$3,742	$3,996	$25,871	$18,315
Company 2	$6,335	$1,923	$5,504	$2,557	$4,397	$3,242	$3,701	$2,538	$3,397	$3,170	$23,334	$13,430
Company 3	$6,116	$2,172	$5,516	$788	$3,408	$954	$2,519	$1,574	$2,000	$1,913	$19,559	$7,401
Company 4	$3,387	$835	$1,975	$300	$1,640	$309	$1,215	$358	$1,040	$770	$9,257	$2,572
Company 5	$4,710	$3,375	$4,863	$1,799	$4,069	$82	$2,205	$135	$2,382	$1	$18,229	$5,392
Company 6 **	$10,695	$7,398	$13,475	$10,189	$8,324	$14,389	$7,005	$4,250	$7,231	$7,026	$46,730	$43,252
Company 7	$8,751	$16,229	$4,223	$8,581	$8,920	-$8,926	$12,257	$25,271	$19,756	$10,697	$53,907	$51,852
Company 8	$3,950	$307	$6,325	$389	$5,688	$210	$1,886	$980	$502	$182	$18,351	$2,068
Company 9	$2,395	$1,280	$2,288	$1,285	$1,222	$815	$1,089	$964	$782	$576	$7,776	$4,920
Company 10	$12,301	$4,942	$10,407	$1,952	$3,938	$138	$4,844	$2,685	$4,467	$2,742	$35,957	$12,459
Company 11	$8	$2	$9	$1	$4	$1	$7	-$77	$3	-$1	$31	-$74
Company 12 ***											$0	$0
Company 13	$1,981	$353	$1,530	$152	$765	$10	$428	$294	$447	$116	$5,151	$925
	$67,472	$46,106	$62,347	$28,540	$47,572	$14,836	$41,013	$41,842	$45,749	$31,188	$264,153	$162,512
LOSS RATIO	**68.33%**		**45.78%**		**31.19%**		**102.02%**		**68.17%**		**61.52%**	

* - Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

** - This company supplied Earned Premiums

*** - This company did not provide the information requested in this question - Most of the premium recorded as being from this Province originates elsewhere but the insured has some exposure in this Province.

Commercial Insurance Review
Summary*

Question 3 **A schedule showing the average base rates for each coverage for each of the last ten years, and the percentage changes for each year.**

Company 1	Company specializes in writing commercial and industrial property and casualty business and generally does not write smaller and mid-size accounts.
Company 2	The information provided suggests that there were significant premium increases for both property and liability in each of 2003, 2002 and 2001.
Company 3	Average base rates for each coverage in Newfoundland are not available as the rates are determined based on the claims experiences of clients nationally and not provincially. Most of commercial businesses in Newfoundland are part of large national commercial accounts with premiums allocated to each province based on risk locations.
Company 4	Rating decisions are made by individual underwriters and it is not possible to obtain this data.
Company 5	Risks are written and priced on a risk by risk basis.
Company 6	Base rates for each coverage in Newfoundland are not available, as the rates are not based on claims experience provincially. Commercial businesses in Newfoundland are generally part of national commercial accounts with premiums allocated to each province based on risk locations.
Company 7	Each location of a risk is individually rated based on a number of risk characteristics as well as terms and conditions (i.e. deductibles). The information requested cannot be provided.
Company 8	Collect data using the IBC statistical plan. This plan does not collect rates, either base or final. Unable to provide either average base rates for any of the past ten years or percentage changes.
Company 9	The information provided shows increases in liability premiums over the last five years ranging from 4% to 16%. Property premiums have been variable with small increases and decreases.
Company 10	The information provided suggests increases in liability premiums in the last four years ranging from 9% to 25%. Premiums for property have recently decreased but increased significantly in 2002 and 2001.
Company 11	Company does not have a commercial rate manual.
Company 12	IAO/CGI rates used. A USA rating agency is used to access rates to develop a premium for that portion of revenue that derives from sales to the USA.
Company 13	The information provided suggests increases in premiums in each of the last five years of 5% to 17%.

* Company Numbers used to protect confidentiality of company information. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Summary*

Question 4 **An explanation of which rates are based on the IAO suggested rates and to what extent have scheduled ratings been used.**

Company 1	Property rates are risk specific based on construction, occupancy, protection and exposure. If the IAO has inspected and rated risk, it is used as a starting point. Often these rates and inspections are not current and do not reflect current occupancy or exposure. Property is the only line that uses IAO base rates. Unable to provide the extent to which scheduled ratings have been used.
Company 2	Company's rates are not IAO based. Does not use schedule rates.
Company 3	Does not track the IAO rate on each risk. No statistics to answer this question in a definitive manner. While rates are based on the IAO schedules, underwriters are empowered to deviate from these rates. It is fair to say that these deviations almost always result in premiums below the IAO recommended levels.
Company 4	Scheduled rates are not used.
Company 5	Company currently does not use IAO suggested rates or scheduled ratings.
Company 6	Rates used are IAO/CGI developed rates. Deviation from IAO/CGI rates would be subject to credits or debits based on exposures and used with various exposure bases such as amount of insurance, remuneration, area etc. to calculate the premium.
Company 7	Currently use IAO/CGI base rates for casualty, fidelity, crime and for some miscellaneous coverage such as glass and signs. Rates for property such as building, equipment and stock are developed internally by actuarial department based on company and industry data. Adjustments are made to the developed base rates by underwriters when setting the final price taking into consideration the individual risk characteristics and account experience.
Company 8	In general, Company's commercial rating for both property and liability is driven by the commercial insurance industry experience on each identified classification or occupancy as per the Insurance Bureau of Canada (IBC) industry code. For liability rating, Newfoundland and Labrador's experience and rating is included with the IBC designated "Atlantic Region" and as such, base rates for Newfoundland and Labrador follow the base rates for the rest of the Atlantic provinces. To these base rates, which are specific to the type of business and/or operation, we apply other factors in setting our premium levels. Business experience, revenue, other criteria to determine the size or scope of the business, and individual claims experience are taken into account. For property rating, the experience and rates produced are very specific to the actual business and location. The base rate is the average statistical rate required for that occupancy, fire protection, type of construction and other, mainly physical, attributes. Business experience and claims experience, as in liability rating, are all taken into consideration as "variables" which will affect the final premium.

Company 9	Company currently does not use IAO suggested rates or scheduled ratings.
Company 10	Although on occasion smaller and mid-size accounts are written on an association or group basis, the vast bulk of writings are derived from larger commercial and industrial enterprises.
Company 11	Rating decisions are made by individual underwriters and it is not possible to obtain this data.
Company 12	Rating guides look at the operations conducted by the client. The rates are based on industry identification codes and then other key triggers depending on the coverage purchased. For commercial property these triggers are: Nature of Operations; Nature of construction of the building; Location of the building within the province – degree of fire protection; Deductible level chosen; Size and loss experience of the individual risk; and Risk management feature – underwriter's assessment of the quality of the risk. Commercial risks are not particularly homogeneous; there are usually individual risk features that would mean a difference in premiums.
Company 13	Rating is based on a series of factors including construction, occupancy, protection characteristics (i.e. is the property adequately protected for the exposures present), risk quality and deductible. Each location within an account is individually rated. Does not use the IAO suggested rate.

* Company Numbers used to protect confidentiality of company information. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Summary*

Question 5 **A schedule showing the profit for each line of business in this Province for each of the last ten years.**

Companies were able to provide five years of data which on an individual basis may be considered to be confidential. The Board has prepared these summary spreadsheets which set out combined totals and averages for each of commercial property, commercial liability and combined property and liability. It should be noted that the information contained in the spreadsheet was derived based on a number of assumptions and may contain inconsistencies arising from the unique characteristics of the operation of each company. This combined with the fact that not all companies participated fully means that the spreadsheet information may not reflect actual industry profitability. The size of the market in the Province and the amount of premium for each company further undermines the credibility of the information. See the attached spreadsheets.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Financial Information - Combined - Property and Liability (000)
Summary of Information Supplied*
2000 - 2004

	Earned Premiums	Claims Incurred	Expenses & Commissions**	Investment Income **	Weighted*** Return on Investment	Net Income Before Income Taxes	Income Taxes	Other Items	Net Income	Weighted*** Return on Equity
2000	$20,775	-$17,636	-$7,820	$2,850	8.59%	-$1,831	$853	$9	-$969	-19.60%
2001	$22,060	-$17,319	-$7,521	$2,143	6.42%	-$637	-$580	$14	-$1,203	-55.37%
2002	$28,455	-$21,294	-$9,603	$2,570	5.05%	$128	-$898	$21	-$749	10.96%
2003	$39,233	-$14,190	-$12,108	$3,079	6.18%	$16,014	-$2,940	$45	$13,119	24.48%
2004	$48,071	-$32,026	-$14,898	$3,877	5.40%	$5,024	-$929	$39	$4,134	-12.20%
Total for Period	$158,594	-$102,465	-$51,950	$14,519	31.64%	$18,698	-$4,494	$128	$14,332	-51.72%
Average	$31,719	-$20,493	-$10,390	$2,904	6.33%	$3,740	-$899	$26	$2,866	-10.34%

* - This summary was developed from data supplied by insurers that represent an average of 69% of the Commercial Property market for the five years given and an average of 57% of the Commercial Liability market for those same five years.
** - These figures generally involve allocations by the insurers of overall amount to province and line of insurance
*** - These figures are weighted based on Earned Premiums. Not all insurers provided these figures and the weights are based on those participating.

In the calculation of the Weighted Return on Investment, one company did not provide the information necessary to calculate this figure. This company represented an average of 8.6% of the total market for the five years given for Commercial Property and 6.4% of the total market for the five years given for Commercial Liability.

In the calculation of the Weighted Return on Equity, two companies did not provide the information necessary to calculate this figure. These companies represented an average of 7.5% of the total market for the five years given for Commercial Property and 10.3% of the total market for the five years given for Commercial Liability.

One of the companies responding could not provide separate data for Commercial Property and Liability and could only provide a total of both combined. This combined total has been included in the summary for Commercial Liability.

Commercial Insurance Review
Financial Information - Property (000)
Summary of Information Supplied*
2000 - 2004

	Earned Premiums	Claims Incurred	Expenses & Commisions*	Investment Income**	Weighted*** Return on Investment	Net Income Before Income Taxes	Income Taxes	Other Items	Net Income	Weighted*** Return on Equity
2000	$10,854	-$7,575	-$4,666	$1,266	7.67%	-$121	-$47	$9	-$159	-7.18%
2001	$12,150	-$9,911	-$4,456	$785	6.17%	-$1,432	-$426	$14	-$1,844	-98.51%
2002	$16,019	-$7,784	-$5,872	$856	3.60%	$3,219	-$1,749	$21	$1,491	47.91%
2003	$21,527	-$2,847	-$7,194	$1,212	4.90%	$12,698	-$2,347	$45	$10,396	41.72%
2004	$22,993	-$13,337	-$7,843	$1,716	4.80%	$3,529	-$809	$39	$2,759	-15.80%
Total for Period	$83,543	-$41,454	-$30,031	$5,835	27.14%	$17,893	-$5,378	$128	$12,643	-31.86%
Average	$16,709	-$8,291	-$6,006	$1,167	5.43%	$3,579	-$1,076	$26	$2,529	-6.37%

* - This summary was developed from data supplied by insurers that represent an average of 69% of the Commercial Property market for the five years given and an average of 57% of the Commercial Liability market for those same five years.
** - These figures generally involve allocations by the insurers of overall amount to province and line of insurance
*** - These figures are weighted based on Earned Premiums. Not all insurers provided these figures and the weights are based on those participating.

In the calculation of the Weighted Return on Investment, one company did not provide the information necessary to calculate this figure. This company represented an average of 8.6% of the total market for the five years given for Commercial Property and 6.4% of the total market for the five years given for Commercial Liability.

In the calculation of the Weighted Return on Equity, two companies did not provide the information necessary to calculate this figure. These companies represented an average of 7.5% of the total market for the five years given for Commercial Property and 10.3% of the total market for the five years given for Commercial Liability.

One of the companies responding could not provide separate data for Commercial Property and Liability and could only provide a total of both combined. This combined total has been included in the summary for Commercial Liability.

Commercial Insurance Review
Financial Information - Liability (000)
Summary of Information Supplied*
2000 - 2004

	Earned Premiums	Claims Incurred	Expenses & Commisions*	Investment Income**	Weighted*** Average Return on Investment	Net Income Before Income Taxes	Income Taxes	Other Items	Net Income	Weighted*** Average Return on Equity
2000	$9,921	-$10,061	-$3,154	$1,584	9.60%	-$1,710	$900	$0	-$810	-33.20%
2001	$9,910	-$7,408	-$3,065	$1,358	6.73%	$795	-$154	$0	$641	-2.49%
2002	$12,436	-$13,510	-$3,731	$1,714	6.91%	-$3,091	$851	$0	-$2,240	-36.63%
2003	$17,706	-$11,343	-$4,914	$1,867	7.74%	$3,316	-$593	$0	$2,723	3.53%
2004	$25,078	-$18,689	-$7,055	$2,161	5.94%	$1,495	-$120	$0	$1,375	-8.89%
Total for Period	$75,051	-$61,011	-$21,919	$8,684	36.92%	$805	$884	$0	$1,689	-77.67%
Average	$15,010	-$12,202	-$4,384	$1,737	7.38%	$161	$177	$0	$338	-15.53%

* - This summary was developed from data supplied by insurers that represent an average of 69% of the Commercial Property market for the five years given and an average of 57% of the Commercial Liability market for those same five years.
** - These figures generally involve allocations by the insurers of overall amount to province and line of insurance
*** - These figures are weighted based on Earned Premiums. Not all insurers provided these figures and the weights are based on those participating.

In the calculation of the Weighted Return on Investment, one company did not provide the information necessary to calculate this figure. This company represented an average of 8.6% of the total market for the five years given for Commercial Property and 6.4% of the total market for the five years given for Commercial Liability.

In the calculation of the Weighted Return on Equity, two companies did not provide the information necessary to calculate this figure. These companies represented an average of 7.5% of the total market for the five years given for Commercial Property and 10.3% of the total market for the five years given for Commercial Liability.

One of the companies responding could not provide separate data for Commercial Property and Liability and could only provide a total of both combined. This combined total has been included in the summary for Commercial Liability.

Commercial Insurance Review
Summary*

Question 6 **Copies of current rating manual; and underwriting guidelines with all supplemental directives.**

Company 1	A rating manual is not available as Company does not use a rating manual to price products. Claims experience is used for pricing. Underwriters have a set of general guidelines for writing various lines of business. Company provided examples of their guidelines.
Company 2	Due to the characteristics of clients, each is individually rated. Company does not maintain underwriting manuals or guidelines. Company provided several examples of how clients are rated.
Company 3	Rating guides look at the operations conducted by the client. The rates are based on industry identification codes and other key triggers depending on the coverage purchased. For commercial property these triggers are: nature of operations; nature of construction of the building; location of the building within the province – degree of fire protection; deductible level chosen; size and loss experience of the individual risk; and risk management feature.
Company 4	IAO/CGI rates are used. A US rating agency is used to develop a premium for that portion of revenue that derives from USA sales. The Company's underwriting guidelines are supported by extensive training of its staff.
Company 5	The Company uses IAO/CGI base rates for some coverage. These rating manuals can be obtained from the IAO/CGI directly. Copies of the Company's underwriting guidelines and supplemental directives were provided to the Board.
Company 6	The Company does not have a commercial underwriting manual.
Company 7	The Company does not maintain paper based rating manuals and underwriting guidelines. Control over the underwriting process is maintained by way of underwriting authority statements to which all underwriters are subject. This is consistent with the Company's general practice of underwriting on a risk-by-risk basis.
Company 8	The Company does not maintain its own rating manual for commercial insurance products. The Company uses the IAO recommended rates as a guide, coupled with the individual judgment of its local underwriters. The Company does have an electronic underwriting tool that guides its staff through the process of assessing risk.

Company 9	The Company specializes in writing Commercial and Industrial Property and Casualty business. Although on occasion smaller and mid-size accounts are written on an association or group basis, the vast bulk of its writings are derived from larger commercial and industrial enterprises.
Company 10	Copies of the Company's Commercial package manual and Commercial Marketing Guidelines were provided to the Board.
Company 11	The underwriting materials used come from a multitude of sources that span more than 20 years. These materials are voluminous and it would be a huge undertaking to copy the electronic and paper files. These are also confidential and proprietary documents.
Company 12	A rating manual is not available as the Company does not use a rating manual to price its products. Claims experience is used for pricing. Underwriters have a set of general guidelines for writing various lines of business.
Company 13	Rating decisions are made by individual underwriters and it is not possible to obtain this data.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Summary*

Question 7 **A list of particular coverages, exposures or risks where *(Insert Company Name)* will not provide coverage or where the rates that are offered are significantly higher than average.**

Company 1	The decision to expand or contract writings for any given risk type or market is based on the ability to effectively underwrite the exposures presented. Company will assess, quantify and determine the quality of the exposures. Following a strategic review, Company no longer writes: credit and financial risks; large multinational business - where overseas exposure exceed 25% of assets; mid-market realty schedules; large entertainment and recreational risks; liability for risk managed business including municipalities and related exposure. The unique features of local markets are recognized and the Company tries to support the rural broking community. Business & Personal Services including not for profit organizations is a target segment where the Company has specific expertise and products.
Company 2	Based on the underwriting decisions made by individual underwriting manager.
Company 3	The underwriting guidelines used are designed to meet the needs of small to medium sized businesses.
Company 4	Company's underwriting philosophy is risk underwriting, rather than class underwriting. A risk is not declined because it is in a particular category, but if declined it is because the risks inherent in that particular entity are unacceptable. This philosophy also extends to the pricing of products. It is not the practice to attempt to use price to limit acceptance of any type of business.
Company 5	All submissions are underwritten and considered on individual merits. Any risk is considered unless reinsurance precludes it or it is above capacity.
Company 6	Company does not maintain lists of exposures or risks for which it will not provide coverage. However, generally speaking, underwriters have very restricted authority with respect to, and will not generally write the following coverages: product recall; pure financial loss; currency risk; aviation (direct); commercial hull insurance; and nuclear.

Company 7	Specializes in writing Commercial and Industry Property and Casualty business. Although on occasion smaller and mid-size accounts are written on an association or group basis, the vast bulk of writings are derived from larger commercial and industrial enterprises.
Company 8	Most classes of professional liability; marine insurance; environmental impairment liability; and employment practices liability
Company 9	A list of exclusions was included with the underwriting manuals. Exceptions are made based on individual experience. Pricing is done on the merits of the individual risk.
Company 10	Underwriting decisions are made by individual underwriters which specialize in different classes of business.
Company 11	Exclusions and rates charged are based on underwriting guidelines and claims experience of each account.
Company 12	Decisions to provide coverages are based on underwriting decisions made by individual underwriting managers.
Company 13	Company does not stipulate any coverages, exposures or risks for which it will not provide coverage. Do not have average rates. Underwriting is based on an assessment of the individual risk, subject to any reinsurance treaty restrictions.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Summary*

Question 8 **In relation to insurance for each of liquor serving establishments, tourism/hospitality and volunteers/non-profit risks:**

(i) what coverage is offered:

Company 1	Do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 2	Company does not underwrite any liquor serving establishments, tourism/hospitality and volunteers/non-profit risks in Newfoundland and Labrador.
Company 3	Company generally does not write hospitality, tourism and volunteer/non-profit exposures.
Company 4	Collect data by IBC standards using its statistical plan including a four-digit industry code. There are very few IBC industry codes specific to non-profit. Offer full range of coverages for these classes subject to the specific characteristics of the risk.
Company 5	It is not possible to obtain this information.
Company 6	For acceptable risks Company offers property, liability (including E&O and D&O), crime and inland marine.
Company 7	Do not write bars, taverns and similar establishments, pool halls, risks and live entertainment or dancing, street vendors or chip wagons. Write a number of volunteer/non-profit organizations. Coverage offered includes Property, Liability, Errors & Omissions, Directors & Officers (non-profit), Automotive, Non-owned automobile, Equipment Breakdown, Crime, Employee Fidelity. Key risk issues considered include: Severity exposure. Generally, such organizations are providing service to children and other vulnerable people. Child injury awards have grown significantly over the past few years, and the challenge for such organizations of maintaining a qualified work staff (lower paying, a lot of volunteers), and the enforcement of risk management within organizations.
Company 8	Do not offer coverage to liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 9	Not answered.

Company 10	Standard Commercial General Liability cover is provided to liquor serving establishments if liquor revenue is less than 40% of food revenue, if liquor revenue is 40% or more of food revenue, no coverage is provided. Standard lines of business available for tourism/hospitality. Standard lines of business available for volunteer/non-profit where activities do not include health care, custodial, or sporting, entertainment type activities or operations.
Company 11	Company focuses on addressing the insurance needs of policyholders or potential policyholders. For all risks deemed acceptable within guidelines for the risk classification groupings, comprehensive coverages are offered at a price deemed to be fair for the exposures present.
Company 12	Liquor serving establishments may only qualify for Fire & EC coverage and as a rule Company excludes liquor liability and forcible eviction liability. Seasonally operated risks generally only qualify for Fire and EC coverage. There are no restrictions on non-profit insureds.
Company 13	Currently not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Commercial Insurance Review
Summary*

Question 8 **In relation to insurance for each of liquor serving establishments, tourism/hospitality and volunteers/non-profit risks:**

(ii) detail any specific underwriting rules, guidelines, directions, manuals or underwriting considerations used in assessing these risks:

Company 1	Currently do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 2	Company does not underwrite any liquor serving establishments, tourism/hospitality and volunteers/non-profit risks in Newfoundland and Labrador.
Company 3	Currently do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 4	This information is proprietary and voluminous and was not provided.
Company 5	It is not possible to obtain this information.
Company 6	Standard Commercial General Liability cover for liquor serving establishments is provided if liquor revenue is less than 40% of food revenue, if liquor revenue is 40% or more of food revenue, no coverage is provided. Brokers have information which lists risk types within and outside underwriting appetite for tourism/hospitality. Policy wordings contain standard exclusions, and risk specific exclusions may be added via the Company standard endorsements for volunteer/non-profit. The policyholder's risk management practices are a key underwriting factor in the assessment of exposures for both property and liability.

Company 7	Underwriters are expected to assess these risks using similar criteria to those used on all other risks. For liquor serving establishments, the Company becomes concerned with the liability exposure if liquor receipts exceed 30% of the total receipts. The Company requires information that indicates that the proprietors of such establishments understand the hazards to members of the public inherent in liquor sales, such as staff training and designated driver programmes, and previous alcohol related incidents. In the tourism/hospitality industry, financial stability, age of the building, location and good management are all important considerations. Seasonal operations are written with care. The Company ensures that the properties are properly cared for in the off-season. The Company has no specific guidelines for risks in the voluntary/non-profit sectors. The exception to this is Directors' and Officers' Liability insurance, where "not for profit" organizations are preferred.
Company 8	Company has specific guidelines with respect to the key risk areas in both the Restaurant and Volunteer/non-profit sectors.
Company 9	Company does not offer coverage to liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 10	Every risk is individually underwritten. There are no special rules specific to these classes of risks other than liquor serving establishments which may only quality for Fire & EC coverage and as a rule liquor liability and forcible eviction liability is excluded. Seasonally operated risks generally only qualify for Fire and EC coverage. There are no restrictions on non-profit insureds.
Company 11	Not answered.
Company 12	The information provided suggests that Company risk count for both liquor and tourism have increased significantly over the five year period for both liability and property and has dropped to zero for volunteer over the same period.
Company 13	Company generally does not write Hospitality, Tourism and Volunteer/non-profit exposures.

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Commercial Insurance Review
Summary*

Question 8 **In relation to insurance for each of liquor serving establishments, tourism/hospitality and volunteers/non-profit risks:**

(iii) the number of risks in force by year:

Company 1	Currently do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 2	Company does not underwrite any liquor serving establishments, tourism/hospitality and volunteers/non-profit risks in Newfoundland and Labrador.
Company 3	Company generally does not write Hospitality, Tourism and Volunteer/non-profit exposures.
Company 4	The information provided suggests the policy count for 2002, 2003 and 2004 shows relatively stable counts for each of liquor, tourism and volunteer.
Company 5	It is not possible to obtain this information.
Company 6	The information provided suggests there has been a general decline in total business written in the Province.
Company 7	No answer for liquor serving establishments. The information provided suggests that generally volunteer organizations policy counts are variable but tourism risks seem to be declining.
Company 8	Company does not offer coverage to liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 9	Company does not have data to provide the number of risks in force by year.
Company 10	Data is not readily available.
Company 11	The information provided suggests there has been a general increase in these coverages except Volunteer/Non-Profit.
Company 12	Company does not have this information.
Company 13	Currently do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.

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Commercial Insurance Review
Summary*

Question 8 **In relation to insurance for each of liquor serving establishments, tourism/hospitality and volunteers/non-profit risks:**

(iv) the percentage/number of refusals, cancellations or terminations by line by year for the last ten years:

Company 1	Currently do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 2	Company does not underwrite any liquor serving establishments, tourism/hospitality and volunteers/non-profit risks in Newfoundland and Labrador and has no plans to do so.
Company 3	Company generally does not write Hospitality, Tourism and Volunteer/non-profit exposures.
Company 4	Do not record this data.
Company 5	It is not possible to obtain this information.
Company 6	Information provided suggests decreasing renewals but does not show refusals, cancellations or terminations.
Company 7	Information provided suggests a peak in cancellations of volunteer organizations in 2001 and 2003 and a peak in 2002 for tourism risks. Refusals (i.e. declination of quote) are not tracked.
Company 8	Company does not offer coverage to liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 9	Company does not have the data.
Company 10	The percentage or number of refusals on cancellations or terminations has not been tracked. Once the risk is written cancellations are predicated by other activity such as claims history, non-payment of premium, or refusal on the part of the policyholder to complete recommendations for improvements to property or risk management practices.
Company 11	Company has not in recent years stopped writing a class of business. Information in relation to refusals is not tracked. The information provided suggests that there were minimal cancellations over half of which were at the request of the insured.
Company 12	Do not have this information.
Company 13	Do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.

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Commercial Insurance Review
Summary*

Question 8 **In relation to insurance for each of liquor serving establishments, tourism/hospitality and volunteers/non-profit risks:**

(v) a rate history for each of the last ten years in comparison to other risks:

Company 1	As every risk is individually rated (this class and all others) comparison by class is impossible.
Company 2	Currently do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 3	IAO/CGI rates are used.
Company 4	Company does not have data to provide a rate history for each of the last 10 years.
Company 5	Unable to provide.
Company 6	Based on information provided. Premiums have doubled for both liquor and tourism, both property and liability coverages with the exception of property coverages for tourism where there was almost a 50% increase.
Company 7	Do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 8	Company generally does not write Hospitality, Tourism and Volunteer/non-profit exposures.
Company 9	It is not possible to obtain this information.
Company 10	Company does not offer coverage to liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 11	Due to the number of different risks within the sector, it is not possible to provide this information.
Company 12	Company does not underwrite any liquor serving establishments, tourism/hospitality and volunteers/non-profit risks in Newfoundland and Labrador.
Company 13	Based on the information provided there were significant increases in each of 2001, 2002 and 2003 for each of the Hospitality, Liquor and Volunteer.

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Commercial Insurance Review
Summary*

Question 8 **In relation to insurance for each of liquor serving establishments, tourism/hospitality and volunteers/non-profit risks:**

(vi) the loss results/ratio for each of the last ten years in comparison to other risks:

Company 1	Based on the information provided liability loss ratios seem to be improving over the five year period from the high in 2000 and 2001. Property losses do not show a pattern.
Company 2	The number of business insured under these three segments is too small to provide any meaningful loss ratio statistics.
Company 3	Company does not offer coverage to liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 4	Based on the information provided loss ratios for Tourism/Hospitality were variable with extremely poor results in 2001 and 2003 and for the Volunteer were also variable with poor results in 2000, 2003 and 2005.
Company 5	Do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 6	It is not possible to obtain this information.
Company 7	Company does not have data to provide the loss results/ratios for these types of risks.
Company 8	Company does not have this information.
Company 9	Do not have any detailed policy data in relation to insurance for liquor serving establishments, tourism/hospitality and volunteers/non-profit risks.
Company 10	Company generally does not write Hospitality, Tourism and Volunteer/non-profit exposures.
Company 11	Based on information provided there is variability in loss ratios with generally poorer results for liability than property in recent years and worse than average results for Hospitality and liquor and better than average results for volunteers.
Company 12	Some information was provided but was reported by Company to be unreliable because: general liability has the most volatile loss experience and takes a long time to settle; premium volumes are too small to provide a credible basis for comparison; and differences in timing.
Company 13	Company does not underwrite any liquor serving establishments, tourism/hospitality and volunteers/non-profit risks in Newfoundland and Labrador and has no plans to do so.

*Company Numbers used to protect confidentiality of information provided by individual companies. Company numbers are not assigned consistently to any one insurer.

Exhibit 4

INDUSTRY CODES

INSURANCE BUREAU OF CANADA

Code of Consumer Rights and Responsibilities

and

Industry Commitment to Website Consumer Disclosure

AND

INSURANCE BROKERS ASSOCIATION OF CANADA

Principles and Practices for the Sale of Products and Services by Property and Casualty Insurance Brokers

Code of Consumer Rights and Responsibilities

Insurance Bureau of Canada
Bureau d'assurance du Canada

Insurance companies, along with the brokers and agents who sell home, auto and business insurance, are committed to safeguarding your rights when you shop for insurance and when you submit a claim following a loss. Your rights include the right to be informed fully, to be treated fairly, to timely complaint resolution, and to privacy. These rights are grounded in the contract between you and your insurer and the insurance laws of your province. With rights, however, come responsibilities including, for example, the expectation that you will provide complete and accurate information to your insurer. Your policy outlines other important responsibilities. Insurers and their distribution networks, and governments also have important roles to play in ensuring that your rights are protected.

Right to Be Informed

You can expect to access clear information about your policy, your coverage, and the claims settlement process. You have the right to an easy-to-understand explanation of how insurance works and how it will meet your needs. You also have a right to know how insurers calculate price based on relevant facts. Under normal circumstances, insurers will advise an insurance customer or the customer's intermediary of changes to, or the cancellation of a policy, at least thirty days prior to the expiration of the policy, if the customer provides information required for determining renewal terms of the policy at least forty-five days prior to the expiration of the policy.

You have the right to ask who is providing compensation to your broker or agent for the sale of your insurance. Your broker or agent will provide information detailing for you how he or she is paid, by whom, and in what ways.

Insurance companies will disclose their compensation arrangements with their distribution networks. Brokers and agents are committed to providing information relating to ownership, financing, and other relevant facts.

Responsibility to Ask Questions and Share Information

To safeguard your right to purchase appropriate coverage at a competitive price, you should ask questions about your policy so that you understand what it covers and what your obligations are under it. You can access information through brochures and websites, as well as through one-on-one meetings with your broker, agent, or company representative. You have the option to shop the marketplace for the combination of coverages and service levels that best suits your insurance needs. To maintain your protection against loss, you must promptly inform your insurance company or broker or agent of any change in your circumstances. Information required to determine renewal terms of your policy must be provided at least forty-five days prior to the expiration of the policy.

Right to Complaint Resolution

Insurance companies, their brokers and agents are committed to high standards of customer service. If you have a complaint about the service you have received, you have a right to access your company's complaint resolution process. Your insurer, agent or broker can provide you with information about how you can ensure that your complaint is heard and promptly handled. Disputes involving claims settlement matters may be handled by the independent General Insurance OmbudService *www.gio-scad.org* where your complaint may be referred to an independent mediator.

Responsibility to Resolve Disputes

You should always enter into the dispute resolution process in good faith, provide required information in a timely manner, and remain open to recommendations made by independent observers as part of that process.

Right to Professional Service

You have the right to deal with insurance professionals who exhibit a high ethical standard, which includes acting with honesty, integrity, fairness and skill. Brokers and agents must exhibit extensive knowledge of the product, its coverages and its limitations in order to best serve you.

Right to Privacy

Because it is important for you to disclose any and all information required by an insurer to provide the insurance coverage that best suits you, you have the right to know that your information will be used for the purpose set out in the privacy statement made available to you by your broker, agent or insurance representative. This information will not be disclosed to anyone except as permitted by law. You should know that insurers are subject to Canada's privacy laws.

Industry Commitment to Website Consumer Disclosure

Property and casualty (P&C) primary insurers, that is, those companies which have a direct contractual relationship with the final consumer, commit to making the following information regarding their links to insurance intermediaries easily accessible on their company websites by January 1st, 2005:

1. Compensation to insurance intermediaries

Insurers will explain the applicable elements of their compensation to intermediaries; including whether salary is paid, the range of basic commissions paid, and the range of contingent commissions.

2. Ownership and other financing links to intermediaries

Insurers will provide information on the kinds of financing and ownership links they may have with insurance intermediaries; including direct and indirect ownership, their being owned by a company that also owns insurance brokerages, and loans and credit facilities.

Insurance Bureau of Canada

Bureau d'assurance du Canada

Principles and Practices for the Sale of Products and Services by Property and Casualty Insurance Brokers

The statement of *Principles and Practices for the Sale of Products and Services* by Property and Casualty (P&C) Insurance Brokers has been developed by the Insurance Brokers Association of Canada (IBAC).

The purpose of this document is to set out best practices that should apply to the conduct of P&C brokers in their dealings with consumers of P&C insurance. It will also help to provide consumers with a benchmark to assess the conduct of any P&C broker with whom they currently have a relationship, or are considering establishing a relationship. To this end, IBAC has also developed a companion Consumer's Guide to help clarify the stated principles and practices for the benefit of consumers.

IBAC is seeking voluntary endorsement of these principles and practices. It is hoped that Member associations will inform their members of the existence of this document and encourage them to adopt these best practices.

In some areas the principles and practices may ask P&C brokers to go beyond what is explicitly required by law. That is because legislative and regulatory requirements only specify minimum obligations that must be complied with whereas this document sets out best practices that P&C brokers should strive towards as professionals. It is important to note, however, that the principles and practices are not intended to supercede legislative and regulatory requirements. If any principle or practice is inconsistent with a provision of an applicable law, regulation or rule, the applicable law, regulation or rule will take precedence.

1. Interests of the Client

The client's interests take priority over the P&C broker's interests and should not be sacrificed to the interests of others.

<u>Commentary:</u> This principle is paramount. All remaining principles and practices expand upon this fundamental principle.

2. Needs of the Client

In order to understand the client's interests, the P&C broker must obtain or confirm information about the needs of the client and, when making a recommendation, must reasonably ensure that any product or service offered is suitable to fulfill those needs. The P&C broker will facilitate client purchasing decisions so that they may be made solely on the attributes of the insurance product or service offered, including the value of the services of the P&C broker.

<u>Commentary</u>: *In assessing the needs of the client, the P&C broker should take into account the financial significance and complexity of the product or service being sold.*

3. Legitimate Business Interests

The P&C broker must collect enough information about the client and the transaction to reasonably determine the identity of the client and that the transaction is lawful. The intermediary must not act on behalf of a client when there are reasonable grounds to believe that the transaction is of an unlawful nature.

<u>Commentary</u>: *When obtaining information about the client and his/her business, the P&C broker must not continue to act for the client if it is known that the transaction is unlawful. In some circumstances, the P&C broker will be required to report the transaction to regulatory authorities.*

4. Professionalism

P&C brokers must act in good faith at all times. They must acquire an appropriate level of knowledge relating to their particular business and meet professional ethical standards, including acting with honesty, integrity, fairness, due diligence and skill. The concept of professionalism includes but is not limited to the following:

a. **Education:** In a rapidly changing financial marketplace, P&C brokers must keep abreast of changes in products, regulations and other factors that will affect their ability to provide high standards of service to clients. Education, including continuing education, is a necessary component of professional skill.

b. **Holding Out:** A P&C broker must inform the client of the types of activity he or she is licensed or registered for, as well as the business name(s) of firm(s) under which he or she is authorized to operate.

c. **Advertising and all other Client Communications:** P&C brokers must ensure that all references to their business activities, services and products are clear, descriptive and not misleading.

d. **Business Operations:** P&C brokers must ensure that their financial records are properly maintained and that they follow sound business practices.

e. **Fair Practices:** P&C brokers must not engage in practices that intentionally mislead the client, place the interests of others ahead of the client's interests, or influence a client to purchase an insurance product or service based on anything other than its own attributes, including the value of the services of the P&C broker. Unfair practices are contrary to the underlying spirit of the principles and practices set out in this document. The P&C broker must refrain from practices that contravene, directly or indirectly, the spirit or intent of any of the requirements of these principles and practices.

f. **Financial Accountability:** P&C brokers should have appropriate resources in place to compensate clients who suffer a loss as a result of an error or omission. The P&C broker must ensure that all financial obligations are met

<u>Commentary:</u> *Professionalism means that P&C brokers will strive to adhere to best practices and will not be limited to standards required under law or regulation.*

5. Confidentiality

P&C brokers must protect clients' personal information and take all reasonable steps to ensure that personal information is not divulged and is only used for the purpose for which it was collected, unless the client provides proper authorization, or as required by applicable laws or regulations.

<u>Commentary</u>: *The requirement of confidentiality extends to participants in group plans or other situations whereby there are several individuals covered by a particular policy. A basic requirement for P&C brokers is to ensure that proper care is taken when handling documents that contain personal information provided by clients/group plan participants.*

6. Conflicts of Interest

The P&C broker must avoid knowingly entering into situations where the underlying circumstances could prejudice or bias the direction of advice he or she provides. In the case of a conflict of interest, the client must be made aware of the nature of the conflict.

<u>Commentary</u>: *If a situation arises where a conflict exists and cannot be avoided, the condition can only be mitigated by objective, plain-language disclosure to the client of the nature and impact of the conflict. The client must then be given an opportunity to halt the transaction, to seek other professional advice, or to knowingly proceed with the transaction.*

7. General Information Disclosure

The P&C broker has the responsibility to ensure that the client is fully informed of all relevant information before the client makes a decision. The client is entitled to disclosure of the risks and benefits of the financial products being considered and information about the P&C broker's business relationships that are relevant to the transaction.

<u>Commentary:</u> There are two aspects to disclosure and both must be satisfactorily taken into account under these principles and practices: (1) "product information" regarding product or service features, as well as the main risks and benefits inherent in the transaction or purchase; and (2) P&C broker information" regarding relationship issues which are important to the consumer.

a. **Product Information:** The P&C broker must clearly describe the product or service for the client and the ways in which the transaction will fulfil the needs of the client.

b. **P&C Broker/Business Relationship Information:** Upon request by a client and wherever relevant to the transaction, the P&C broker must include the names of organizations or persons that are, to his or her knowledge, directly providing remuneration to the P&C broker. Upon request by a client and where the outcome of a transaction may be influenced, the P&C broker must also disclose the relationship between the P&C broker and the firm whose product is being considered; and any relationship(s) among the firms directly involved in a transaction. The P&C broker should also disclose any other direct or indirect relationships that are relevant to, and may have influence in, the transaction. Upon request by a client and wherever relevant to the transaction, the P&C broker must also disclose all fees payable by the client, the method of the P&C broker's remuneration (disclosure of specific amount is not required, but disclosure of the type of compensation is, i.e., fixed and percentage commission, salary, or other) and must disclose the existence of any other benefits from sales incentive programs related to the transaction (note: as with compensation, this disclosure only applies to the type of compensation the P&C broker receives, not the specific amount).

8. Client Redress

The P&C broker must deal directly with all formal and informal complaints or disputes, or refer them to the appropriate person or process, in a timely and forthright manner.

9. Definitions

"Client" means any customer or potential customer with whom a P&C broker interacts in the course of his or her business.

"P&C Broker" means an intermediary who has the ability to offer the P&C products/services of several carriers to the insurance buying public in order to provide the most suitable one(s) for the buyer's needs. The P&C Broker can be an individual or a business.

"Personal Information" has the same meaning as defined by existing federal and provincial privacy legislation.

CONSUMER ADVOCATE

A PROPOSED HOMEOWNERS INSURANCE BILL OF RIGHTS FOR NEWFOUNDLAND AND LABRADOR

NEWFOUNDLAND AND LABRADOR'S CONSUMER BILL OF RIGHTS FOR HOMEOWNERS INSURANCE CONSUMERS

This Bill of Rights is a summary of your rights and does not become a part of your policy. The Newfoundland and Labrador Superintendent of Insurance has adopted the Bill of Rights and requires that insurance companies provide you a copy when they issue your policy, or send a renewal notice or cancellation notice.

The Laws of Newfoundland and Labrador give you certain rights regarding your homeowners insurance. This Bill of Rights identifies your rights specified by rule or by provincial statute or regulation, but it does not include all your rights.

The Bill of Rights does not address your responsibilities. Your responsibilities concerning your insurance can be found in your policy. Failure to meet your obligations may affect your rights.

1. Cancellations, Non-Renewals, Coverage Restrictions and Premium Increases

By law, as a policyholder, you have the right to receive at least 45 days prior written notice of cancellation, non-renewal, coverage restrictions and premium increases along with a full explanation of the reasons.

In limited circumstances, such as fraud, substantial change in risk or failure to pay your premium when due, you must be given at least 15 days written notice or 5 days personal notice before your policy is terminated.

2. Explanation of Denial of Insurance Coverage/Use of Previous Denials

Upon request, you have the right to be told in writing why you have been denied coverage. The written statement must fully explain the decision, including the precise incidents, circumstances or risk factors that disqualified you. It must also state the sources of information used. Also, an insurer must judge your application for insurance on its own merits. An insurer cannot base its decision not to issue you a policy solely on the ground that you were in the past declined insurance or refused a renewal of insurance by another insurer.

3. Use of "Non-Claims"

If you are insured and you simply make an inquiry with your insurer or broker as to whether an incident would be covered or for policy information but you do not wish to make a claim, that cannot be counted as a "claim" against you as long as the event or incident does not materially increase the risk insured.

4. Property Condition

Voluntary Inspection Program: you have the right to have an independent inspection of your property by any person authorized by the Superintendent of Insurance to perform inspections. Once the inspector determines that your property meets certain minimum requirements and issues you an inspection certificate, no insurer may deny coverage based on property conditions without reinspecting your property. If an insurer then denies coverage, the insurer must identify, in writing, the specific problem(s) that make your property uninsurable. You can obtain a list of available inspectors on the following website:_______________ or you can call the office of the Superintendent directly at __________to obtain the list.

5. Choice of Deductibles and Premium Impact

The deductible you choose affects your premium. The higher the deductible, the lower the premium. The higher the deductible, the less you will receive from your insurer in the event of a claim. By law, brokers and insurers are obligated to advise you of all available deductible choices (eg. 500, 1,000, 2,000 and 2,500) and the premium at each deductible level.

6. Available Discounts

Most insurers offer discounts for things such as smoke alarm use or other measures. By law, brokers and insurers are obligated to advise you of all available discounts so that you can determine which discounts may be applicable to your situation.

7. <u>Broker Affiliations</u>

Some brokers are independent of insurers, others may be in part owned or financed by insurers - meaning that they are not independent of the companies whose products they sell. Before a broker sells a policy with an insurer with whom they are affiliated, they ust disclose the affiliation to you in writing.

In addition, upon your request, your broker is obliged to advise you of any insurer affiliations they may have.

8. <u>Broker Commissions</u>

Brokers normally earn commissions on the sale of insurance products. The commission forms part of the price you pay for insurance.

Brokers and insurers are obliged to disclose the amount of any commission you are paying on your insurance bill.

In addition, when you are seeking quotes for insurance, brokers are obligated to disclose the amount of the commission that is applicable to the quote(s) given.

9. <u>Broker Disclosure of Insurer Access and All Quotes Obtained</u>

By law, brokers are obliged when giving you a quote or before selling you a policy to advise you the names of all insurers from whom they requested a quote for your policy and the amount of each quote obtained.

On your request, a broker will provide you with the names of all insurers with whom the broker places business.

10. Plain Language on Oil Spills Coverage and Sewer Back Up Coverage

Some but not all policies cover the costs to clean up your property if your oil tank leaks or a neighbour's tank leaks and spills oil on your property.

Insurers are obligated to advise you in plain language whether your policy covers you for clean up costs and, if so, to what extent when you purchase your policy and when you have your policy renewed. Insurers are also obligated to advise you in plain language whether your policy is designed to cover damage caused by sewer back ups.

11. Monthly Payments

You have the right to pay your premium by equal monthly installments, without penalty. For this option, an insurer may charge interest at a rate not exceeding a rate approved by Government and an insurer is permitted to require the 1st 2 months payments up front.

12. Missed or Dishonoured Premium Payments

If you miss a payment or a payment is dishonoured (other than the 1st payment due on contract) that cannot be used against you if, within 30 days of the date when your payment was due, you replace the amount due.

13. Information and Complaints

- Information From Your Insurance Company - you have the right to a toll free number to call your insurance company free of charge with questions or complaints. You can find this number on a notice accompanying your policy.

- Information from the Newfoundland and Labrador Superintendent of Insurance's Office - you have the right to call the Superintendent offices free of charge at__________________or __________to learn more about your rights as an insurance consumer.

- Complaints - you have the right to avail of an insurer's complaint resolution process to resolve any disputes. Your broker or insurer agent must provide you with details as to how you can access this process upon your request.

You also have the right to complain to the Office of the Superintendent of Insurance about any insurance company or any insurance matter and to receive a prompt investigation and response to the complaint.

The Office of the Superintendent of Insurance can be reached as follows:

Phone:
Fax:
email:
Mail:

Insurance Review
Consumer Protection Practices in Canada
(Based on Board Survey, March 2006)

	NL	NS	PEI	NB	PQ	ONT	MAN	SASK	ALB	BC	YUKON	NWT/NU
UNDERWRITING GUIDELINES:												
Any type of regulation relating to underwriting guidelines for commercial or homeowners insurance	NO	NO	NO	NO		NO	NO		NO		NO	
Are guidelines required to be filed with your office	NO	NO	NO	NO		NO	NO		NO		NO	
Must guidelines be approved by your office	NO	NO	NO	NO		NO	NO		NO		NO	
Are copies of underwriting manuals required to be filed with your office	NO	NO	NO	NO		NO	NO		NO		NO	
APPROVAL OF RATES:												
Are insurers required to seek approval of their rates for commercial or homeowners insurance in your jurisdiction	NO	NO	NO	NO		NO	NO		NO		NO	
If so, what is the type of approval	N/A	N/A	N/A	N/A		N/A	N/A		N/A		N/A	
Are insurers required to file their rates with your office	NO	NO	NO	NO		NO	NO		NO		NO	
REASONS FOR CANCELLATION/NON-RENEWAL:												
Do insurers have to provide reasons to insureds when a policy is cancelled or non-renewed	NO	NO	NO	NO		NO	NO		NO		NO	
Are there regulations in your jurisdiction requiring an insurer to provide an explanation as to why a policy is being cancelled or non-renewed	NO	NO	NO	NO		NO	NO		NO		NO	
Are there any regulations in your jurisdiction stating specific reasons that must exist before a policy can be cancelled	NO	NO	NO	NO		NO	NO		NO		NO	
Are there regulations in your jurisdiction requiring an insurer to provide an explanation for any significant increases in premiums	NO	NO	NO	NO		NO	NO		NO		NO	
NOTICE PERIODS FOR CANCELLATION/NON-RENEWAL:												
What notice period is required in your jurisdiction before an insurer can cancel a policy	5-15 DAYS	5-15 DAYS	5-15 DAYS	5-15 DAYS		5-15 DAYS	N/A		15 DAYS		15 DAYS	
What notice period is required in your jurisdiction before an insurer can refuse to renew a policy	N/A	30 DAYS	N/A	N/A		N/A	N/A		15 DAYS		15 DAYS	
Does this notice period apply to all types of insurance or just specific types	FIRE	ALL	ALL	FIRE		FIRE	N/A		ALL		ALL	
CONSUMER PROTECTION:												
Does your jurisdiction have a Consumer Bill of Rights	NO	NO	NO	NO		NO	NO		NO		NO	
Is there an ombudsperson service in your jurisdiction	NO	YES	NO	YES		YES	NO		YES		YES	

Insurance Review
Consumer Protection Practices in the United States
(Based on Research of Available Information, March 2006)

JURISDICTION	CANCELLATION CONTROLS AND UNDERWRITING GUIDELINES	INFORMATION TO BE PROVIDED PRIOR TO CANCELLATION, NON-RENEWAL AND CHANGES	NOTICE PERIOD	BILL OF RIGHTS
TEXAS	Rates must be fair,reasonable,adequate,not confiscatory and not excessive for the risk to which they apply and not discriminatory An insurer may not cancel a liability insurance policy that is a renewal or continuation policy or a policy in its initial term after 60 days from issue unless for: a) Fraud was used in obtaining coverage b) Failure to pay premiums when due c) An increase in risk within the control of the insured that would produce a rate increase d) Loss by the insurer of its reinsurance covering all or part of the risk covered by the policy e) The insurer is placed in supervision, conservatorship or receivership and the cancellation or non-renewal is approved by the supervisor, conservator or receiver	Upon request, the insurer must provide a written statement detailing why the policy was declined, cancelled or not renewed. The statement must: a) State the precise incident, circumstance or risk factors applicable to the insured or applicant that violates the applicable guidelines b) State the source of the information on which the insurer relied regarding the incident, circumstance or risk factors c) Specify any other information considered relevant to the case	Cancellation - An insurer must mail or hand deliver to the insured written notice of the cancellation within 10 days of the effective date of the cancellation Non-Renewal - An insurer must mail or hand deliver to the insured written notice of the cancellation within 60 days of the date that the policy is due to expire. If such notice period is not given, the policy remains in effect until the 61st day after the date on which the notice is mailed or delivered	Texas has a Consumer Bill of Rights that is applicable to Homeowners, Dwelling and Renters Insurance
PENNSYLVANIA	Rates shall not be excessive, inadequate or unfairly discriminatory	The notice of cancellation or non-renewal must be in writing and state specifically what it is. As well, the notice must state specific reasons for the cancellation or non-renewal and at the insured's request, provide loss information for the last three years of the policy	The insurer must provide a 15 day minimum notice in cases of material misrepresentation or non-payment of premiums.In all other cases, a minimum notice period of 60 days is required An insurer shall notify the insured of any premium increase not less than 30 days prior to renewal of the policy	

Insurance Review
Consumer Protection Practices in the United States
(Based on Research of Available Information, March 2006)

JURISDICTION	CANCELLATION CONTROLS AND UNDERWRITING GUIDELINES	INFORMATION TO BE PROVIDED PRIOR TO CANCELLATION, NON-RENEWAL AND CHANGES	NOTICE PERIOD	BILL OF RIGHTS
MISSOURI	In an application for insurance, an insurer is not permitted to ask about prior cancellations or nonrenewals. The insurer can ask for the name of the applicant's prior carrier to verify previous claims history **Cancellation of Policy:** The notice of cancellation shall be effective only if based on one or more of the following reasons: a) Non-payment of premiums b) Fraud or material misrepresentation affecting the policy or a claim presented thereunder c) Violation of any of the terms or conditions of the policy d) The named insured or any occupant of the property has been convicted of a crime that would increase the hazard insured against e) Any physical changes to the property insured that would increase the hazards originally insured against	**Non-Renewal of Policy:** The notice from the insurer shall state the actual reason for non-renewal of the policy. The reasons must be stated clearly and specifically so that an average person will not have to make further inquiries. Generalized terms will not meet this requirement. This requirement will not apply if: a) the insurer is willing to renew b) Non-payment of premiums is the reason for non-renewal c) The insured has indicated he does not want to renew d) The insured fails to pay any required advance premium as required **Change In Premium:** Any renewal notice must contain a notice that informs the insured where he can make a request for information relating to any change to his premium **Cancellation of Policy:** The notice from the insurer shall state the actual reason for non-renewal of the policy. The reasons must be stated clearly and specifically so that an average person will not have to make further inquiries. Generalized terms will not meet this requirement.	**Non-Renewal of Policy:** No insurer shall refuse to renew a policy unless the insurer mails or delivers to the named insured at least 30 days advance notice of its intentions not ot renew. **Cancellation of Policy:** A notice of cancellation of a policy will not be effective unless it is mailed or delivered to the insured at least 30 days prior to the effective date of the cancellation, unless it is for non payment when at least 10 days notice must be given.Provision of proof that the required notice was mailed will be suficient that the required notice was given. This does not apply to a policy that has been in effect less than 60 days at the time of the notice of cancellation.	

Insurance Review
Consumer Protection Practices in the United States
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JURISDICTION	CANCELLATION CONTROLS AND UNDERWRITING GUIDELINES	INFORMATION TO BE PROVIDED PRIOR TO CANCELLATION, NON-RENEWAL AND CHANGES	NOTICE PERIOD	BILL OF RIGHTS
NEW JERSEY	Rates shall not be excessive, inadequate or unfairly discriminatory		All policies must have language allowing the policy to be cancelled by insured at any time upon written request. Cancellation by the insurer for non-payment of premium requires a minimum of 10 days notice prior to the effective date of the termination Cancellation by the insured for any other reason requires a minimum of 30 days notice prior to the effective date of the termination but not more than 120 days Non-renewal of a policy by the insurer for any reason requires a minimum of 30 days notice but not more than 120 days	This state as a Consumer Bill of Rights for automobile insurance
CALIFORNIA	Rates shall not be excessive, inadequate or unfairly discriminatory **Cancellation:** A notice of cancellation is not effective unless proper notice is given and is for one of the following reasons: a) Non payment of premium including amounts due on a prior policy b) The insured is convicted of a crime which would materially increase the risks being insured against c) Discovery of fraud or material misrepresentation by the insured in obtaining the insurance or in pursuing a claim under the policy d) Discovery of willful or grossly negligent acts or omissions that would increase the risk being insured against e) Failure by the insured to implement loss control measures agreed to in order to obtain the coverage f) A change by the insured in its activities that would materially increase the risks being insured against	**Increase in Premium or Policy Changes:** The increase, reduction or change in premiums shall not be effective unless for one of the following reasons:(during the policy period) a) Discovery of willful or grossly negligent acts or omissions that would increase the risk being insured against b) Failure by the insured to implement loss control measures agreed to in order to obtain the coverage c) A change by the insured in its activities that would materially increase the risks being insured against	**Non-Renewal:** Proper notice shall be in writing at least 60 days but less than 120 days prior to policy expiration **Cancellation:** All cancellations shall be in writing and mailed to the named insured and broker/agent at least 30 days prior to cancellation except in the case of nonpayment of premium or fraud when notice must be given at least 10 days prior It must state the effective date of the cancellation and the reasons for the cancellation **Increase in Premium or Policy Changes:** Proper notice must be given and based upon a reason stated in the legislation	This state has a Consumer Bill of Rights for Homeowners' Insurance Could not find any information extending this consumer protection to other classes of insurance

Insurance Review
Consumer Protection Practices in the United States
(Based on Research of Available Information, March 2006)

JURISDICTION	CANCELLATION CONTROLS AND UNDERWRITING GUIDELINES	INFORMATION TO BE PROVIDED PRIOR TO CANCELLATION, NON-RENEWAL AND CHANGES	NOTICE PERIOD	BILL OF RIGHTS
ILLINOIS	No prospective insurer shall request an insured to provide more information about losses than is necessary to underwrite the policy No company shall refuse to issue a policy on the sole basis that the applicant was previously refused insurance or renewal of a policy or that a policy was previously cancelled Insurers may not refuse to issue a policy solely on the basis of one or more claims in the past 60 months that have been considered hate crimes After a policy has been in effect for 60 days, it may be cancelled only for: a) non-payment of premium b) policy was obtained through a material misrepresentation c) the insured has violated the terms of the policy d) the risk originally insured has had a measurable increase e) the insurer has lost its reinsurance for all or a substantial part of the underlying risk f) continuation of the policy could place the insurer in violation of state law	**Non-Renewal:** Insurers may non-renew for any reason except those excluded by legislation. However, insurers must give a specific explanation of the reasons for non-renewal. Insurers may not refuse to renew a policy on the sole basis that the applicant was previously refused insurance or renewal of a policy or that a policy was previously cancelled Insurers may not refuse to renew a policy solely on the basis that the contact with the issuing agent has been terminated Insurers may not refuse to renew a issue a policy solely on the basis of one or more claims in the past 60 months that have been considered hate crimes **Cancellation:** Insurers may not cancel a issue a policy solely on the basis of one or more claims in the past 60 months that have been considered hate crimes Insurers may not cancel a policy solely on the basis that the contact with the issuing agent has been terminated Insurers may not cancel a policy on solely on the basis that the applicant was previously refused insurance or renewal of a policy or that a policy was previously cancelled	**Non-Renewal:** A non-renewal notice must be mailed to the named insured at least 60 days in advance of the non-renewal date. If the insurer fails to give such notice, the policy must be extended for an additional year or until the insured obtains similar insurance on the same terms and conditions as the policy being non-renewed. Insurer must retain proof of mailing such notice in a form acceptable to the postal service or a commercial mail carrier. **Cancellation:** Insurer must mail cancellation notice to the named insured: a) For non-payment of premium - as least 10 days prior to the effective date of cancellation b) All policies during the first 60 days of coverage - at least 30 days prior to the effective date of cancellation: c) All policies after the 61 days of coverage - at least 60 days prior to the effective date of Cancellation: All notices must contain a specific explanation of the reasons for cancellation and must be mailed to the named insured, any lein holder and the insured's broker Insurer must retain proof of mailing such notice in a form acceptable to the postal service or a commercial mail carrier. If an insured cancels a commercial policy mid term for any reason other than non-payment of premium, the notice must inform the insured of the right ot appeal and the procedure to follow for such appeal.	

IBAN - A PLAN FOR HOMES IN DOWNTOWN ST. JOHN'S AND OTHER HARD TO PLACE HOMEOWNERS RISKS

November 2005

INSURANCE BROKERS ASSOCIATION OF NEWFOUNDLAND

Insurance is important. A healthy insurance system underpins the Canadian economy and social fabric by assuming part of the financial risk inherent in running a business, owning a home, as well as driving a car. The basic theory is simple – the premiums of many fortunate policyholders pay a proportion of the losses of the unfortunate few whom suffer insured losses. However, some important segments of Canada are reporting that insurance is too expensive, and in some cases, unavailable.

IBAN proposes to formalize and expand our current industry-based market availability mechanism to increase access to homeowners insurance for households in Newfoundland. **The purpose of the plan is to assist consumers who, for legitimate reasons, are unable to obtain a minimum amount of homeowners insurance.** It is not intended to take the place of homeowners contacting insurance brokers or representatives to shop the market for home insurance, nor is it for homeowners looking for a lower premium. The following plan is, however, for those homeowners who, after contacting the majority of insurance brokers and representatives in their area, are still not able to get an insurance policy on their home. Clients will be asked to identify what brokers they contacted and the individual who they were speaking with.

It should be noted that a small number of risks are uninsurable, or carry higher premium costs for valid reasons. As brokers, IBAN members cannot guarantee that insurance will be available for all risks, or that premiums will be acceptable to all consumers.

Handling of Files

When the IBAN consumer representative receives a call - IBAN analysis of the file

The IBAN consumer representative shall obtain information from the consumer demonstrating that it is impossible to obtain insurance. This information should include the name of the last insurer, the policy number, the names of the insurers that have declined the risk and the reason or reasons for declining it.

After checking information that confirms that the consumer has not been able to obtain insurance, the IBAN consumer representative will analyze the file. The consumer officer shall find a broker in the "queue" in rotation to help the client. The information collected by the IBAN consumer representative would then be passed on to the broker.

The participating IBAN broker would then contact the client to review and confirm the information received. There are two possible scenarios:

1. Consumer has already received quotes but perceives them as too high. This should be rare as the purpose of the IBAN plan is not to get lower rates for consumers. Assuming there are valid underwriting rules, nothing further is done. The participating IBAN broker may contact the current provider on an informal basis to advise them that IBAN has been contacted and in the case of misinformation ask the current provider to review and determine if they can do anything else for the client.

2. Consumer has exhausted all options and still can't get insurance. This should be the most common scenario. The participating IBAN broker would then approach markets who would consider the risk and present quotes if they can be obtained or the reasons coverage cannot be provided if unsuccessful.

Tracking

The participating IBAN broker shall report back to the IBAN consumer representative. IBAN will record the circumstances relating to each call and the outcome. IBAN will compile statistics including, but not limited to: reasons for declination, declining companies, assigned companies, the premium , the Broker of Record. (Sample attached. Once implemented, actual form may vary depending on need.).

IBAN CONSUMER LOG.

Consumer Representative ________________________Date _________
Broker Assigned ____________________

Consumer Name	
Declining Companies	
Reasons for Declining	
Previous insurance company / auto insurance company	
Insurers Contacted by participating IBAN broker	
Result of Contacts	
Final Outcome	

Insurance Review
Consumer Assistance Models
March 2006

CANADA

In Canada consumers have several options for dealing with complaints, particularly regarding claims, against their insurance providers. The Consumers Council of Canada, on its web site (**www.insurance-canada.ca**) outlines the industry related alternatives that are available, beginning with the importance of understanding what is not covered in the policy, and the responsibility of the insurer to make this information clear to the consumer before the policy is purchased. The recommended course of action in any complaint process is to:

i) Try to resolve the problem with the company first by discussing it with a senior official in the claims department, the claims manager if possible.

ii) Find out if the insurance company has an ombudsman or an employee who deals with customer complaints and contact that person. In Ontario the law requires that all insurance companies have someone in this position.

iii) Approach one of the information officers at the consumer assistance centres operated by the Insurance Bureau of Canada (IBC) (for property and casualty insurance) for advice concerning the best course of action.

iv) Contact the Centre for the Financial Services OmbudsNetwork (CFSON) to be referred to one of three industry-level ombudservices, depending on the line of insurance in question. The appropriate contact for home, car and business insurance issues is the General Insurance OmbudService (GIO), a regionally based Canadian service, which is governed by a Board of Directors consisting of five non-industry directors from various regions and two industry directors. This ombudservice, with its mediators and customer service officers, is capable of producing a report with recommendations including, in some cases, restitution or compensation. These recommendations are not binding on the insurer. They also do not include matters of product pricing and business decisions, settlement procedures established by legislation, or matters that have been, or are, before the courts. Services provided are paid for by the insurance company concerned.

v) Retain a public adjuster, a licensed adjuster who represents the consumer in a dispute and takes a percentage of the final settlement as payment. These public adjusters are not common in Canada, nor are they popular with the insurance industry.

vi) Resort to legal action.

The Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) are associations of insurance regulators and of insurance intermediary licensing and regulatory authorities in Canada. These organizations can and have investigated issues that can arise in Canada in an effort to enhance public confidence in the Canadian insurance marketplace. In recent years these two groups have banded together to establish the Industry Practices Review Committee (IPRC) to examine the financial relationships between insurance companies and their sales intermediaries (e.g. contingent commissions, ownership and financial links, and sales incentives) that have the potential for creating conflicts of interest.

Although the IPRC found no evidence of any illegal insurance related activity, it did determine that there was a need for regulators to continue to monitor the marketplace and to take any action necessary if such evidence is detected. It also found reason to believe that some current business practices may contribute to a perception of or actual conflicts of interest in the marketplace. This led to the issuance of several discussion papers, and the following recommendations with regard to best practices and the harmonization of these practices, where they already exist, across jurisdictions:

i. Priority of the client's interest: An intermediary must place the interests of policyholders and prospective purchasers of insurance ahead of his or her own interests.
ii. Disclosure of conflict or potential conflict of interest: Consumers must receive disclosure of any actual or potential conflict of interest that is associated with a transaction or recommendation.
iii. Product suitability: The recommended product must be suitable for the needs of the consumer.

The IPRC is now waiting for comment on how to best achieve these recommendations, whether through industry initiatives, through regulations, or through a combination of both.

New Brunswick

On January 1, 2005, the *Consumer Advocate for Insurance Act* for the province of New Brunswick was proclaimed. This office, reporting to the Legislative Assembly and working closely with the Superintendent of Insurance, was given the authority to:

i) examine the underwriting practices and guidelines of insurers, brokers and agents, and report the use of any prohibited underwriting practices to the Superintendent of Insurance for further action;
ii) conduct investigations, with the authority to compel attendance at any enquiries convened, in relation to insurers, brokers and agents concerning the availability of insurance and the premiums charged;
iii) respond to requests for information with respect to insurance;
iv) develop and conduct educational programmes with respect to insurance for the purpose of educating consumers;
v) carry out tasks or investigations in relation to insurance matters or the insurance industry as directed by the Legislative Council, and
vi) represent consumers in any proceedings concerning automobile insurance rates before the New Brunswick Insurance Board.

The Office of the Consumer Advocate is fully funded by an annual assessment on all members of the insurance industry licensed to operate in the province, prorated according to the premiums written by each member.

In its first year of operation the Office of the Consumer Advocate, with its staff of four including the Consumer Advocate, addressed approximately 1,500 files, including inquiries by individuals, businesses and groups concerning the cost and the availability of insurance. Although the filing guidelines of the companies are not regulated, the Office, with its ability to access these guidelines, has been able to make inquiries and offer suggestions that have often assisted clients in finding coverage, in reducing costs, in resolving disputes with insurance companies, or in better understanding their needs and the coverage offered. The primary benefit of the office, according to the Consumer Advocate, is its ability to follow up complaints on behalf of consumers, convene enquiries, and make recommendations. In general this pressures insurance companies to better communicate with their customers in an effort to avoid these subsequent reviews.

In an effort to broaden this service the Office has also undertaken to raise its profile and improve its accessibility by the construction of a user-friendly web site, the distribution of brochures in all public buildings, and speaking engagements and presentations to any interested groups.

British Columbia

British Columbia, under the authority of the *Financial Institutions Act*, has given the Insurance Council of British Columbia the authority to investigate and discipline its licensees and former licensees, or all insurance agents, salespersons and adjusters operating in the province. This Council, made up of industry and consumer representatives, in existence for over 50 years, was granted, in January 2005, rule-making authority and made accountable to the provincial government, reporting to the Minister of Finance.

The Council is fully funded by the insurance industry. This funding takes the form of license and examination fees and an annual assessment to insurance companies holding a business authority in British Columbia.

The Council is made up of part-time voting and non-voting members who are appointed by the Minister through Orders-In-Council. It has full-time staff, including an executive director, which carries out the day-to-day operations of the Council.

Legislative changes, effective January 1, 2005, made it a condition of every license issued in the province that the licensee comply with the Council's Code of Conduct, a document that defines and communicates the minimum standards of professional conduct that must be maintained in the insurance industry. Under the *Financial Institutions Act* the Council has been given the responsibility for maintaining these standards, and can therefore deal with complaints, within its jurisdiction, against licensees. If these complaints or inquiries are found to be outside of its jurisdiction (i.e. disputes regarding claims, refunds, or requests for policy interpretations) it will attempt to direct the complainant to an appropriate organization or person that can assist in resolving the problem. If these complaints show that there is a reasonable likelihood that a breach of regulatory requirements has occurred, an inquiry may result and further disciplinary action may be taken under the authority of the same *Act*.

Ontario

On July 1, 1998 the Financial Services Commission of Ontario (FSCO) was created as an arm's length agency of the Ministry of Finance. This organization, made up of three key parts, the Commission, the Financial Services Tribunal, and the Superintendent and Staff, issues licences authorizing persons and enterprises to conduct business as insurance agents and regulates insurance as well as pensions, loan corporations, trust companies, credit unions, caisses populaires, co-operatives and mortgage brokers. The purpose of the Commission, as set out in the FSCO Act, is to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors, and to make recommendations to the Minister of Finance about the regulated sectors. Under this mandate FSCO oversees a system that obliges all licensed insurance companies in Ontario to have in place:

i) A protocol that provides consumers with clear information on complaint handling procedures within the company and further information on any subsequent action that may be required should the complaint remain unresolved. A customer who is dealing with a complaint that remains unresolved within a reasonable period of time has the right to have the complaint reviewed by an independent third party. While the independent third party may provide recommendations that are not binding on the company involved, FSCO will ensure that the names of any companies that do not comply with the recommendations will be made public;

ii) Front line staff who are sufficiently educated in this protocol to be able to assist consumers as to how to proceed with complaints;

iii) A consumer complaint officer who will oversee the company's complaint handling process and act as a liaison with FSCO. The names of contact officers, along with contact information, are published on the web site of FSCO.

Within FSCO the Office of the Insurance Ombudsman is responsible for the operation of the complaint handling system and investigates consumer allegations against insurance companies or representatives that may have engaged in deceptive or illegal insurance practices.

Because in Ontario each consumer with a complaint has the right to an independent review, each insurance company is required to file with FSCO the name of the independent third party that it uses. Most insurance companies are members of an OmbudService under the Financial Services OmbudsNetwork (FSON), with the General Insurance Ombudservice (GIO) being the independent third party for Property and Casualty member companies. Generally FSCO, which provides dispute resolution services, including mediation, neutral evaluation, arbitration, and appeals with regard to statutory accident benefits, is the independent third party for companies who are not members of FSON. As part of its responsibilities the Licensing and Market Conduct Division of FSCO investigates allegations of contraventions of legislative requirements.

FSCO has taken on an educational role in that it distributes articles for publication in newspapers throughout Ontario. These articles, along with brochures, a web site, and responses to inquiries, are aimed at providing the public with useful information regarding the purchase of coverage and the process that is available for dealing with complaints. Although this information is primarily directed towards consumers of automobile insurance and homeowners insurance, it is not restricted to these types of coverage.

Alberta

The Alberta Insurance Council is a crown-controlled corporation that derives its authority under a delegation from the Minister of Finance for the province. It is responsible for the licensing and discipline of insurance agents, brokers and adjusters in the province of Alberta. The Council also investigates complaints into the actions of insurance companies operating in that province.

The Council, funded by the industry through licensing and exam fees, consists of eight members with specific criteria. Three, who come from the industry and are eligible to act on behalf of one or more insurer, are elected and five are appointed, three by the industry and two by the Lieutenant Governor In Council.

The Council, in carrying out its duties and responding to complaints, has the following powers:

- i) To impose penalties against holders or former holders of certificates of authority, including the revocation of such certificates, where the holder has:
  - a) Been found guilty of misrepresentation, fraud, deceit, untrustworthiness, or dishonesty;
  - b) Has contravened any provisions of the Alberta Insurance Act;
  - c) Has demonstrated incompetence to act as an insurance agent;
- ii) To approve or refuse the granting of certificates for persons to act as insurance agents;
- iii) To approve educational training programs for persons involved in the insurance industry, including texts and study materials; and
- iv) To approve examinations written by applicants for a certificate of authority.

Manitoba

The Insurance Council of Manitoba, which has received its authority under a delegation from the Superintendent of Insurance, provides general information concerning licensed agents, brokers or adjusters in Manitoba, and investigates legitimate complaints against licensed agents/brokers and/or adjusters under its jurisdiction. It has the authority to discipline licensees who have been found to have breached the Act, the Regulations, the Licensing Rule, or the Insurance Councils Code of Conduct, but it does not have the power to order the payment of a claim or the refund of a premium or service fee.

Other Provinces

Other provinces have a variety of organizations and government departments that offer various types of assistance and information to consumers:

- **Nova Scotia –** The Financial Institutions Division, Office of the Superintendent of Insurance, regulates insurance in the province, licenses all insurers, agents/brokers, agencies and adjusters, and enforces the *Insurance Act*. This division, which is also responsible for the regulation of credit unions, trust and loan companies, responds to approximately 400 documented complaints and 5,000 enquiries annually. These are predominantly insurance related. Although the Office of the Superintendent assists consumers in dealing with insurance matters, it has no authority to direct that a particular action be taken in the settlement of a claim. It does, however, have the authority to take disciplinary action if the Act is not followed.
- **Prince Edward Island –** The Consumer, Corporate and Insurance Division of the office of the Attorney General, under the supervision of the Superintendent of Insurance, is responsible for insurance legislation, licensing, the handling of insurance complaints, and the collection of premium tax. These duties are in addition to several responsibilities under the *Real Estate Trading Act* and the *Fire Prevention Act*.
- **Saskatchewan** – The *Saskatchewan Insurance Act*, in addition to setting out the legislative framework for the regulation of insurance companies and agents, describes the responsibilities, obligations, and powers of the Superintendent of Insurance. One of these responsibilities is to investigate consumer complaints. This responsibility has been delegated to the General Insurance Council, which is also responsible for licensing, establishing bylaws which incorporate sections on conduct and trade practices, complaint handling and investigative procedures and disciplinary actions.

UNITED STATES

Regulation of insurers, agents/brokers and adjusters in the United States falls under the jurisdiction of individual states.

Wisconsin

In Wisconsin the Office of the Commission of Insurance is responsible for overseeing the operations and marketing of insurance companies operating in the state. In this capacity it responds to complaints of customers regarding insurance companies or agents, after the customer has made an attempt to directly settle the dispute with the insurance company, and publishes the results of its investigations and the resulting orders to companies.

In addition to the brochures for the information of consumers that have been published by the Office of the Commission of Insurance, the industry has undertaken an outreach program. The Wisconsin Insurance Alliance, a state trade association of property and casualty insurance companies which provides representation for its members by a legislative council, appearances at hearings, and the drafting of bills and amendments where appropriate, has an active public information committee.

Virginia

The Bureau of Insurance, a division of the Virginia State Corporation Commission, is funded by a tax on the total insurance industry in the state and has responsibility:

i) For ensuring that the citizens of the state are provided with adequate and reliable insurance protection;
ii) That the insurance companies selling policies are financially sound to support payment of claims;
iii) That the agents selling company policies are qualified and conduct their business according to statutory and regulatory requirements, as well as acceptable levels of conduct; and
iv) That the insurance policies are of high quality, are understandable, and are fairly priced.

In addition to licensing, regulating, investigating and examining insurance companies, agencies and agents, the Bureau has a Consumer Service Section for the P&C Division and another for the Life and Health (L&H) Division. These Sections handle complaints and inquiries regarding claims, cancellations, termination, and rates. Under each of these sections there is an Outreach Coordinator who concentrates on providing educational opportunities.

The Outreach Coordinator, who has held this position since 2002 when it was first created to educate consumers about the various insurance products available in the marketplace, has attempted to make people aware of the availability of this service by providing numerous consumer brochures and by speaking to community and civic groups interested in insurance topics. Although the Outreach Coordinator for L&H has been quite busy, the Outreach Coordinator for P&C has met with less success. Instead he spends a large part of his time assisting the Consumer Services Section which takes thousands of calls each year from consumers with all types of questions dealing with insurance.

New Jersey

The Property and Casualty Section of the Department of Banking and Insurance is responsible for the regulation of rates, rules and forms for property and casualty insurance, for personal, commercial and title insurance sold in the state. It fulfills this responsibility by the use of a rates and rules review process which ensures that the companies charge rates which are adequate to pay claims without being excessive, and policy form review which guarantees that the forms comply with statutes, regulations and departmental guidelines. The Section also responds to complaints or inquiries regarding all forms of insurance.

The Department has an Office of Public Affairs that develops consumer awareness programs. Presentations are based on any area of interest and are made to any interested groups, ranging from seniors' groups to high school students.

California

The California Department of Insurance licenses and regulates the state's insurance industry. In this role it responds to complaints concerning companies, agents, brokers, title insurers, underwritten title companies and others. These complaints may include problems with:

i) Premiums and rates charged,
ii) The settlement of claims,

iii) Terminations and cancellations, and
iv) Alleged misrepresentations by an agent, broker or solicitor.

The web site of the Department provides, in addition to the legislation and decisions of the department, an extensive array of consumer tools to assist consumers in understanding and obtaining insurance products to meets their needs. It also provides information obtained from general surveys of rates and contact information that a consumer might use in order to further discuss the information found on the web site. The Department publishes on its web site an annual Consumer Complaint Study for Automobile Insurance, Homeowners Insurance and Life Insurance, including a three-year summary for each company.

Texas

The Texas Department of Insurance (TDI) regulates all aspects of the insurance industry in the state of Texas. Encouragement of competition, licensing and enforcement, financial monitoring and consumer assistance and education all come under the jurisdiction of this department of the state government, with an annual operating budget of approximately $3.6 million, funded through a maintenance tax assessed to insurance companies operating in the state.

Each year the TDI, with its staff of 77 full time equivalent employees, responds to nearly 1 million consumer inquiries, including about 250,000 telephone calls. Although the majority of contacts are regarding personal lines of insurance, assistance is not restricted to this area.

TDI processes nearly 30,000 consumer complaints each year, which resulted, in 2005, in more than $36 million being returned to consumers in the form of additional claims payments and premium refunds. The top three categories of complaints involved unsatisfactory claims settlement, settlement delays and poor customer service.

In its 2005 Annual Report TDI outlines the number of complaint cases closed in each year from 1997 to 2005. In the first year reported there were more than 17,000 cases closed. The number increased to over 40,000 in 2003 and decreased to 24,000 in 2005. Over that same period the average amount of money returned to consumers has ranged from a low of $1,000 in 1997 to a high of $1,600 in 2005.

As a part of its consumer outreach program, the Department distributes annually more than 3 million publications on various insurance topics and conducts more than 550 consumer events, which may concern general insurance education or may be directed towards certain consumer groups and their needs.

Every two years the agency contracts with an outside group to conduct a customer service surveys, while the web site contains an ongoing customer satisfaction survey. The results generally indicate that while customers are not always happy with the outcome of their complaints, they are generally happy with the assistance provided.

AUSTRALIA

The Insurance Ombudsman Service is a national dispute resolution service developed by the Insurance Council of Australia to handle inquiries and complaints and to resolve disputes that come within the terms of reference of the Service. The dispute handling arrangements, in place since 1993 and covering most general insurance products, have been put into place essentially for the benefit of applicants or insureds and prospective insureds, individuals or small businesses, but excluding large corporations. The service extends to persons who are seeking to make a claim in relation to motor vehicle property damage against an insured or against a person to whom insurance extends.

All participating members, who must be licensed to carry on general insurance business in the country, who participate voluntarily in the Service, and who fund the Service, must sign an agreement signifying their compliance with the terms of reference, including the procedures to be followed and any binding determinations of a panel, referee or adjudicator. A Code of Practice, which was first adopted in 1994, was revised in 2000. The most recent version, which was completed in 2005 and will go into effect in July 2006, sets out the responsibilities of insurance companies with regard to service standards, issue and renewal of insurance, claims handling, dispute resolution, review and sanctions, and operation of the Code. Disputes dealt with in the Code may include:

i) Claims, including the interpretation or application of an insurance contract, the amount of a claim, or a delay in payment,
ii) A member's sales and marketing conduct,
iii) Advice about a general insurance product,
iv) Changes to premium, excluding disputes about rating factors and weightings the insurer applies to determine an individual's base premium,
v) Failure to offer insurance,
vi) Cancellation of an insurance contract,
vii) Disclosure issues, and
viii) The service or handling of a complaint.

Several types of insurance, including legal liability, business interruption, and industrial special risks, are excluded.

The operation of the Code is monitored by the Insurance Ombudsman Service, which maintains and makes available a current list of members. Each year the Insurance Ombudsman Service compiles an annual review, a public document, which includes a statistical breakdown of the total number of disputes referred to the Service and the disposition of the disputes. A member not meeting its obligations under the terms of reference or under the signed agreement may be the subject of a reference in the annual review.

PUBLIC UTILITIES BOARD

Insurance Review

Homeowners / Commercial / Marine

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